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Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

MARCH 23, 2004

7:30 P.M.

**COUNCIL CHAMBERS
5300 BELT LINE ROAD**

REGULAR SESSION

Item #R1 – Consideration of Old Business

Item #R2 – Consent Agenda

CONSENT AGENDA

#2a – Approval of the Minutes for the March 9, 2004 Council Meeting.

Item #R3 – Appointment of a member to the Board of Zoning Adjustment (BZA).

Administrative Comment:

Marti Olden's term expires 1/14/05. Due to Mrs. Olden's relocation, a new board member needs to be appointed.

Item #R4 – Appointment of a member to the Planning and Zoning Commission.

Administrative Comment:

Commissioner Tom Braun has filed for a place on the ballot for City Councilmember for the 2004 Municipal Election. Mr. Braun was appointed by former Councilmember Barrett. The appointment now belongs to Councilmember Niemann.

Item #R5 – **PUBLIC HEARING** and consideration of an Ordinance amending Article II, "Districts and District Boundaries," of Appendix A, "Zoning," of the Code of Ordinances by amending Section 3 to allow required parking for a use to be provided at a location other than that required by the prescribed regulations for the district in which the use is located, if authorization is obtained from the City Council.

Attachments:

1. Public Notice
2. Staff Report
3. Proposed Ordinance

The Planning and Zoning Commission Findings:

The Planning and Zoning Commission will review this request on March 23, 2004 at 6:00 p.m. The staff will present the Commissioner's decision at the meeting.

Administrative Recommendation:

Administration recommends approval.

Item #R6 – **PUBLIC HEARING** and consideration of an Ordinance authorizing an alternate off-street parking arrangement than is otherwise allowed under the applicable district regulations contained in the Comprehensive Zoning

Ordinance, for the location of parking for the existing use of a certain tract of land generally located at 5055-5057 Keller Springs Road within the Town and generally known as Liberty Plaza I; authorizing the City Manager to execute the acceptance of the Declaration of Easement and Agreement on behalf of the Town as a third party beneficiary.

Attachments:

1. Memorandum from John Hill
2. Ordinance
3. Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R7 – Consideration of a Resolution terminating and canceling a contract in the amount of \$75,456.00 with Oriental Building Services, Inc. (OBS) for custodial services for Town facilities.

Attachments:

1. Council Agenda Item Overview
2. Termination Letter from Minok Suh
3. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R8 – Consideration of a Resolution approving an award of bid and authorizing the City Manager to enter into a contract in the amount of \$78,048.00 with James Enterprises, Inc. for custodial services for Town facilities.

Attachments:

1. Council Agenda Item Overview
2. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

Item #R9 – Consideration of a Resolution approving the implementation of a new e-mail campaign program in the amount of \$36,000.00 with the David Green Organization.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R10 – Consideration of a Resolution approving a change to the Town's current hiring requirements pertaining to qualifications and pay of Police Officer applicants.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R11 – Presentation and discussion regarding Memorandum of Understanding between Addison Police Department and Dallas Area Rapid Transit ("DART") Police Department concerning police services for DART related matters.

Attachments:

1. Council Agenda Item Overview
 2. Memorandum of Understanding
-

Item #R12 – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$35,800.00 with TRICO Tower Service, Inc. for the enhancement of the existing grounding system to towers, generators and entry ports at the Emergency Operation Center (EOC) and the Police and Fire Departments.

Attachments:

1. Council Agenda Item Overview
2. Quote from TRICO Tower Service, Inc.
3. Summary Report
4. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R13 – Consideration of a Resolution approving a design proposal and authorizing the City Manager to enter into a contract in an amount not to exceed \$26,175.00 with Talley Associates for landscape architecture design services for the Parkview in Addison Circle Park.

Attachments:

1. Council Agenda Item Overview
2. Proposal
3. Exhibit

Administrative Recommendation:

Administration recommends approval.

Item #R14 – Consideration of a Resolution the Town of Addison, Texas, opposing any school finance or tax system reforms that would negatively affect Town revenues and economic development.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Attachments

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 – Discussion of personnel regarding a performance evaluation for the City Manager, pursuant to Section 551.074 of the Texas Government Code.

REGULAR SESSION

Item #R15 – Consideration of a Resolution approving a merit increase and salary adjustment for the City Manager.

Adjourn Meeting

Posted 5:00 p.m.
March 18, 2004
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

March 9, 2004
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Niemann, Silver,
Turner
Absent: None

Item #R1 – Consideration of Old Business

Chris Terry, Assistant City Manager, was in attendance upon the absence of City Manager, Ron Whitehead.

The following employees were introduced to the Council: Diane Leary (Visitor Services), Loyd Campbell (Fire) and Charles Mitchell (Police).

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the February 24, 2004 Council Meeting.
(Approved)

Item #2b – Consideration of approval and authorization for the release of the 2004 Comprehensive Annual Financial Report (CAFR). (Approved)

Item #2c – Consideration of approval of construction and authorization of final payment in the amount of \$49,654.39 to Jim Bowman Construction Company, L.P. for construction of the Inwood/South Quorum Access, Phase II: Inwood Connection Project. (Approved)

Item #2d – Consideration of approval of construction and authorization of final payment in the amount of \$98,311.98 to AUI Contractors for construction of the Addison Athletic Club expansion and outdoor leisure pool project. (Approved)

Item #2e – Approval of a 9-1-1 billing agreement with Total Telephone Service Co., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2f – Approval of a 9-1-1 billing agreement with Capital Telecommunications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2g – Approval of a 9-1-1 billing agreement with NOS Communications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2h –Approval of a 9-1-1 billing agreement with Lightyear Communications, which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2i – Approval of a 9-1-1 billing agreement with American Fiber Network, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2j – Approval of a 9-1-1 billing agreement with Westel, Inc. which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2k –Approval of a 9-1-1 billing agreement with United Communications Systems, which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2l – Approval of a 9-1-1 billing agreement with nii Communications, Ltd., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Councilmember Niemann moved to duly approve the above items. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R3 – Appointment of a member to the Board of Zoning Adjustment (BZA).

Councilmember Silver moved to table this item until the March 23, 2004 Council meeting. Councilmember Hirsch seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4440 Belt Line Road, Red Baron, (formerly Landry's), on application from 4440 Belt Line, Ltd., represented by Ms. Susie Russell.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Silver moved to duly pass Ordinance No. 004-014 approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at

4440 Belt line Road, Red Baron, (formerly Landry's), subject to conditions. Councilmember Mallory seconded. The motion carried.

Mayor Wheeler moved to amend Councilmember Silver's motion subject to additional conditions. Councilmember Niemann seconded the motion for the amendment. Motion for the amendment carried.

Voting Aye on the amendment to the motion: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay on the amendment to the motion: None

Absent: None

1. A revised landscaping plan shall be submitted by the applicant that indicates all landscaping on the site. A Landscape Architect licensed in the state of Texas must provide the plan.
2. Any new mechanical equipment shall be screened from all adjacent properties. The screening mechanism shall be architecturally compatible, and the Building Official shall make the determination of "architecturally compatible".
3. The applicant shall not use any terms, including the term "bar", "tavern", or any graphic depictions that denote alcoholic beverages in exterior signs.
4. The applicant will adhere to the Town's Ordinance requirement of at least sixty percent (60%) of their gross revenues from the sale of food.
5. There shall not be any "live" performances outdoors on the deck.
6. The Town's Noise Ordinance will be enforced.
7. Landscaping shall not be allowed to be less than 20% of site. The site shall not have less than 20% landscaping.

Voting Aye on the amended motion: Wheeler, Chow, Hirsch, Mallory, Silver, Turner

Voting Nay on the amended motion: Niemann

Absent: None

Item #R5 – Consideration of approval of a final plat for two lots on 7.7656 acres in a Commercial-2 zoning district, located at the southeast corner of Addison Road and Keller Springs Road, on application form Stonemason Partners, represented by Mr. Toby Rodgers of Wier and Associates, Inc.

Councilmember Mallory moved to duly approve a final plat for two lots on 7.7656 acres in a Commercial-2 zoning district, located at the southeast corner of Addison Road and Keller Springs Road, subject to the following conditions:

1. Change all "Temporary Drainage Easement" designations to "Drainage Easement".

2. Change all “Offsite Drainage Easement” designations to “Drainage Easement”.
3. Designate all drainage easements adjacent to Addison Road and Keller Springs Road as “Drainage and Landscape Easements”.
4. Plat shall be revised to add a Certificate of Approval, which should contain a line for the date the plat was approved by the City Council, and signature lines for the Mayor and City Secretary.

Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R6 – Consideration of approval of a final plat for Block A, Lots 1 and 2, Block B, Lots 1-5, Block C, Lot 1, Block D, Lots 1-5, and Block E, Lots 1 and 2 located on 9.016 acres bounded by Morris Avenue on the south, Quorum Drive on the west, a proposed street on the north, and Spectrum Drive on the east, on application from CityHomes, represented by Mr. Robert Jebavi of Brockette/Davis/Drake.

Councilmember Mallory moved to duly approve a final plat for Block A, Lots 1 and 2, Block B, Lots 1-5, Block C, Lot 1, Block D, Lots 1-5, and Block E, Lots 1 and 2 located on 9.016 acres bounded by Morris Avenue on the south, Quorum Drive on the west, a proposed street on the north, and Spectrum Drive on the east, subject to the following conditions:

1. The proposed 34.5 ft. right-of-way dedication along Spectrum Drive was previously dedicated to the Town by separate instrument. The plat should reflect existing right-of-way, along with the volume and page in which it was filed.
2. All 20-ft. fire lane, utility and access easements must also include a drainage easement.
3. All mews streets (Parkview, Seabolt, and Breedlove) should be called out with a “Place” designation. Streets should be re-labeled as Parkview Place North, Parkview Place South, Seabolt Place, and Breedlove Place. Calloway Drive can stay a “Drive”.
4. Plat shall be revised to reflect modified park dedication, as shown in the exhibit from Robert Jebavi (attached to staff report).
5. Brett Pedigo’s title to be correctly reflected on the plat.

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R7 - Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-184, Setback, area and height, for Addison Walk, located at 5000 Belt Line Road, on application from Direct Development.

Item withdrawn by applicant.

Item #R8 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, and Section 62-186, Monument Signs, for Champps Restaurant, located at 4951 Belt Line Road, on application from Signtech Electrical Advertising, Inc.

Councilmember Silver moved to duly pass Ordinance No. 004-015 approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, and Section 62-186, Monument Signs, for Champps Restaurant, subject to the following conditions:

1. South Façade – 50% of the letters up to 32.5”, the remaining 50% are 26” or less.
2. West Façade – 50% of the letter up to 35” in height, the remaining 50% are 28” or less.
3. East Façade – no increase at all.
4. Attached sign square footage to exceed 20 square feet is not allowed.
5. No monument sign allowed.

Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R9 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Authetix Inc., located at 4355 Excel Parkway, Suite 100, on application from Authentix, Inc.

Councilmember Turner moved to duly pass Ordinance No. 004-016 approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Authentix Inc., subject to no conditions. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R10 – Consideration of a Resolution for the Town of Addison support for Dallas Area Rapid Transit's (DART's) federal funding request for securing a Full Funding Grant Agreement (FFGA) for \$700 million for the expansion of DART's light rail system.

Councilmember Turner moved to duly pass Resolution No. R04-015 approving the Town of Addison support for Dallas Area Rapid Transit's (DART's) federal funding request for securing a Full Funding Grant Agreement (FFGA) for \$700 million for the expansion of DART's light rail system. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R11 – Consideration of a Resolution approving a Change Order in the amount of \$101,587.00 to a previously approved contract with Site Concrete, Inc. for the construction of the Spectrum Drive North/South Extension Project.

Councilmember Turner moved to duly pass Resolution No. R04-016 approving a Change Order in the amount of \$101,587.00 to a previously approved contract with Site Concrete, Inc. for the construction of the Spectrum Drive North/South Extension Project. Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R12 – Consideration of approval of a purchase in the amount of \$130,802.67 to Houston-Galveston Area Council (HGAC) for vehicles and equipment.

Councilmember Chow moved to duly approve the purchase in the amount of \$130,802.67 to Houston-Galveston Area Council (HGAC) for vehicles and equipment. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R13 – Consideration of approval and award of bid in the amount of \$408,772.56 to Dallas Dodge Chrysler Jeep for the purchase of fourteen (14) 2004 Dodge Durango Sport Utility Vehicles.

Councilmember Chow moved to duly approve and award of bid in the amount of \$408,772.56 to Dallas Dodge Chrysler Jeep for the purchase of fourteen (14) 2004 Dodge Durango Sport Utility Vehicles. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R14 – Consideration of an Ordinance amending Ordinance No. 088-049 allowing employees the option to buy back TMRS service credit.

Steve Blum, 17030 Planters Row, spoke in clarification of this item in response to a direct question he received from Councilmember Chow. Councilmember Mallory moved to table this item. Councilmember Hirsch seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R15 – Consideration of approval to rename the Facilities and Fleet Services Department to General Services Department and approval of a position adjustment level change from Administrator of Facilities and Fleet Services to Director of General Services.

Councilmember Turner moved to duly approve the renaming of the Facilities and Fleet Services Department to General Services Department and approval of a position adjustment level change from Administrator of Facilities and Fleet Services to Director of General Services. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R16 – Consideration of an Ordinance authorizing the Town of Addison to consider applications for the performance of depository services for the Town and to consider applications received from a bank, credit union, or savings association that is not doing business within the Town.

Councilmember Turner moved to duly pass Ordinance No. 004-017 authorizing the Town of Addison to consider applications for the performance of depository services for the Town and to consider applications received from a bank, credit union, or savings association that is not doing business within the Town. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

EXECUTIVE SESSION. Council did not convene into Executive Session.

Item #ES1 – Discussion of personnel regarding a performance evaluation for the City Manager, pursuant to Section 551.074 of the Texas Government Code.

Item #R17 – Consideration of a Resolution approving a merit increase and salary adjustment for the City Manager.

Councilmember Mallory moved to table the Executive Session and Item #R17 until the March 23, 2004 Council Meeting. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

**THERE ARE NO
ATTACHMENTS
FOR ITEM #R3**

**THERE ARE NO
ATTACHMENTS
FOR ITEM #R4**



#R5-1

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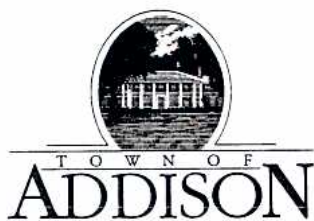
**A PUBLIC HEARING BEFORE THE ADDISON
PLANNING AND ZONING COMMISSION
MARCH 23, 2004**

6:00 P.M.

**ADDISON TOWN HALL
5300 BELT LINE ROAD
COUNCIL CHAMBERS**

NOTICE is hereby given that the Planning and Zoning Commission of the Town of Addison, Texas, will hold a public hearing at 6:00 p.m. on the 23rd day of March, 2004, at Addison Town Hall located at 5300 Belt Line Road, Dallas, Texas, to receive public comment on a proposed amendment to the Town's Comprehensive Zoning Ordinance to allow required parking for a use to be provided in a manner other than that set out in the regulations prescribed for the district in which the use is located if authorization from the City Council is obtained.

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
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Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

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March 17, 2004

STAFF REPORT

RE:

Case 1453-Z-Town of Addison

LOCATION:

Amendment to Appendix A, the
Addison Zoning Ordinance

REQUEST:

Approval of an amendment to Article II,
Districts and District Boundaries, Section
3

APPLICANT:

Town of Addison, represented by
Carmen Moran

DISCUSSION:

Background. Currently in Addison, a building cannot be occupied for a specific use unless all of the parking required for that use is located on the same platted lot as the building. For example, an office building must have enough spaces within the boundaries of its lot to provide parking spaces at a rate of one space per 300 square feet of space in the building. If an owner finds that he needs more spaces than the Code requires, he may lease additional spaces from another site, but the required parking must be within the platted lot that contains the building.

In many cities, the Council has authority under the Zoning Ordinance to allow a building or development to make up its required parking from various locations. For example, the Hard Rock Café on McKinney Avenue in Dallas is a renovation of an existing building. The building did not have available parking within its platted lot to satisfy the parking requirement for a restaurant. However, there were vacant lots in proximity to the hard Rock Café that could be used for parking. The Dallas City Council had the authority to allow those lots to be counted as the required parking for the Hard Rock Cafe. By doing so, Dallas was able to allow an architecturally interesting building to be re-used rather than scraped. The City of Dallas allows "off-site" lots to be counted on a case-by-case basis by approving an agreement between the two land owners involved.

It is simpler for all concerned to require that all parking be provided within the platted lot. However, unique situations arise that cause that not to be possible. The City has recently become aware of such a unique situation.

The Liberty Plaza I building at 5055 Keller Springs Road was constructed in the early 1980's with surface parking. A couple of years later, the Liberty Plaza II building was constructed approximately 70 feet north of Liberty Plaza I. Building II was placed in the parking lot that had served Liberty Plaza I, but the parking was replaced in an underground parking garage beneath Liberty Plaza II. There is sufficient parking on the entire site for both buildings, but Crescent Realty now wants to sell the buildings to the Holt Companies. Before Holt Companies purchases both buildings, it wants to be sure that it can sell them off to separate owners. Under the city's current requirements, if Liberty Plaza I were sold to another owner, it would not have sufficient parking on its site to be occupied. In this unique situation, it is not possible to replat the parking to put sufficient parking into the Liberty Plaza I site because the parking is located under the Liberty Plaza II building.

The reason the city has parking requirements in the first place is so that one landowner cannot fill up his site with a building and then use the land of others to satisfy the parking demand he creates. Parking requirements force property owners to be good neighbors and to accommodate their parking needs on their own property.

In this case, Crescent Realty can assure that the two future owners will be good neighbors by granting an easement between the two tracts that will run with the land and be available to future owners. The Council, as a "third party beneficiary," can approve the easement that makes the two owners good neighbors, and can assure that the intent of the parking requirements is being met. Both of these buildings are less than 14% occupied, and the staff would like to see any impediments to getting them sold (and hopefully released) removed.

RECOMMENDATION:

The staff does not often advocate complicating the Zoning Ordinance. However, as the city ages, more unique situations may arise that cause certain properties to be unable to meet parking requirements. The staff feels it will be helpful to amend the Ordinance and give the Council the ability to accommodate unique parking situations by allowing parking to be located on another site on a case-by-case basis. The staff would also note that this amendment does not allow the Council to change the number of spaces required, but only approve an off-site location.

Staff recommends approval of the proposed amendment to Article II, Section 3, of the zoning ordinance to read as follows:

Section 3. Use of land and buildings.

No land shall be used for and no building shall be erected for or converted to any use other than provided in the regulations prescribed for the district in which it is located, except as hereinafter provided. Required parking for an allowed use must be located as provided in the regulations prescribed for the district in which the use is located, except as may be otherwise authorized by the city council.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CMORAN", with a stylized flourish at the end.

Carmen Moran
Director of Development Services

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING ARTICLE II, "DISTRICTS AND DISTRICT BOUNDARIES," OF APPENDIX A, "ZONING," OF THE CODE OF ORDINANCES BY AMENDING SECTION 3 TO ALLOW REQUIRED PARKING FOR A USE TO BE PROVIDED AT A LOCATION OTHER THAN THAT REQUIRED BY THE PRESCRIBED REGULATIONS FOR THE DISTRICT IN WHICH THE USE IS LOCATED IF AUTHORIZATION IS OBTAINED FROM THE CITY COUNCIL; PROVIDING A PENALTY NOT TO EXCEED \$2000; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city council of the Town of Addison finds that it may be appropriate in some instances to allow required parking for a use to be provided at a location other than that required by the prescribed regulations for the district in which the use is located; and

WHEREAS, the city planning and zoning commission and the city council, in accordance with state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to the Code of Ordinances; and

WHEREAS, the city council finds that it is in the public interest to make this amendment to the Town's Comprehensive Zoning Ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. That the Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending Section 3 of Article II, "Districts and District Boundaries," of Appendix A, "Zoning," to read as follows:

“ Section 3. Use of land and buildings.

No land shall be used for and no building shall be erected for or converted to any use other than provided in the regulations prescribed for the district in which it is located, except as hereinafter provided. Required parking for an allowed use must be located as provided in the regulations prescribed for the district in which the use is located, except as may be otherwise authorized by the city council.”

Section 2. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2000 for each offense and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 3. Savings. That this ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this ordinance.

Section 4. Severability. That the sections, paragraphs, sentences, phrases, clauses and words of this ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the city council hereby declares that it would have adopted such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. Effective Date. That this ordinance shall become effective from and after its date of passage and publication as provided by law.

PASSED AND APPROVED by the city council of the Town of Addison, Texas this the _____ day of _____, 2004.

R. Scott Wheeler, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Kenneth C. Dippel, City Attorney

MEMORANDUM

TO: Carmen Moran
FROM: John Hill
RE: Liberty Plaza
DATE: March 17, 2004

As we have discussed, the Liberty Plaza site consists of two abutting properties, one located on the south (what we have referred to as "Liberty Plaza I") and the other located immediately to the north ("Liberty Plaza II"). There is not adequate off-street parking located on-site of Liberty Plaza I for the existing uses located thereon, and Liberty Plaza I has been using the off-street parking located on Liberty Plaza II. The property owner has asked if the parking on Liberty Plaza II used by Liberty Plaza I could be recognized by the City as authorized parking for Liberty Plaza I.

The City Council will consider, at its March 23, 2004 meeting, an ordinance amending Section 3 of Article II of the Comprehensive Zoning Ordinance (Appendix A to the Code). If adopted, that amendment will allow the City Council to authorize off-street parking required for an allowed use on a tract of land to be located on a different tract of land.

Attached is a document entitled "Declaration of Easement and Agreement," in which Liberty Plaza I is given the right to use 237 parking spaces located on the Liberty Plaza II tract, so that Liberty Plaza I will have a total of 329 parking spaces as required by the Zoning Ordinance for the existing uses located on Liberty Plaza I (92 parking spaces on the Liberty Plaza I tract, plus the 237 parking spaces on the Liberty Plaza II tract). The Agreement is one between private parties, but the City is made a third-party beneficiary to it and has certain rights under the Agreement. There is a provision for acceptance by the City of the third-party rights at the end of the Agreement.

Also attached is a draft of an Ordinance for consideration by the Council which authorizes the alternative parking arrangement for Liberty Plaza I as described in the Agreement, and which authorizes the City Manager to execute the acceptance of the third-party rights and benefits. The Ordinance, if approved, should be approved to be effective upon the amendment to Zoning Ordinance becoming effective (ie, after any necessary period of publication of the amendment), and the Ordinance so provides.

Please let me know if you have any questions or comments or desire any additional information.

cc: Mr. Ken Dippel
Ms. Angela Washington

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AUTHORIZING AN ALTERNATE OFF-STREET PARKING ARRANGEMENT, AS DESCRIBED IN THE DECLARATION OF EASEMENT AND AGREEMENT ATTACHED HERETO, THAN IS OTHERWISE ALLOWED UNDER THE APPLICABLE DISTRICT REGULATIONS CONTAINED IN THE COMPREHENSIVE ZONING ORDINANCE, FOR THE LOCATION OF PARKING FOR THE EXISTING USE OF A CERTAIN TRACT OF LAND GENERALLY LOCATED AT 5055-5057 KELLER SPRINGS ROAD WITHIN THE TOWN AND GENERALLY KNOWN AS LIBERTY PLAZA I; AUTHORIZING THE CITY MANAGER TO EXECUTE THE ACCEPTANCE OF THE DECLARATION OF EASEMENT AND AGREEMENT ON BEHALF OF THE CITY AS A THIRD PARTY BENEFICIARY THERETO; PROVIDING THAT THIS ORDINANCE SHALL NOT BE EFFECTIVE UNTIL SUCH TIME THAT ORDINANCE NO. ____ OF THE CITY HAS BECOME EFFECTIVE.

WHEREAS, Ordinance No. _____ of the Town of Addison, Texas (the "City") amended the Comprehensive Zoning Ordinance of the Town of Addison, Texas (the "City"), the same being Appendix A - Zoning of the Code of Ordinances of the City, by amending Article II, Section 3 thereof and providing that "required parking for an allowed use must be located as provided in the regulations prescribed for the district in which the use is located, except as may be otherwise authorized by the city council"; and

WHEREAS, Ordinance No. _____ was adopted by the City Council on March 23, 2004 but does not take effect until such time as it has been published in accordance with law; and

WHEREAS, in accordance with Article II, Section 3, as amended by Ordinance No. _____, the City Council desires to authorize an off-street parking arrangement (the "Alternative Parking Arrangement") which will allow a portion of the off-street parking required for an allowed use on a tract of land (located at 5055-5057 Keller Springs Road within the City and generally referred to as "Liberty Plaza I") to be located on an abutting tract of land (referred to in the Agreement as "Liberty Plaza II"); and

WHEREAS, the Alternative Parking Arrangement and the land and use thereof to which it is applicable are described in that document entitled "Declaration of Easement and Agreement" ("Agreement") attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Pursuant to Section 3, Article II of the City's Comprehensive Zoning Ordinance, an Alternative Parking Arrangement, described in the attached Declaration of

Easement and Agreement, is hereby authorized for the existing use of that tract of land generally located at 5055-5057 Keller Springs Road, Addison, Texas and referred to in the Agreement as "Liberty Plaza I," specifically to allow parking spaces for existing uses on Liberty Plaza I to be located on Liberty Plaza II, and as further described therein.

Section 2. Following the effective date of this Ordinance, the City Manager is hereby authorized to execute on behalf of the City the form of "Acceptance by Town of Addison, Texas" as a third party beneficiary of certain terms of the Agreement.

Section 3. This Ordinance shall take effect from and after its adoption and upon Ordinance No. _____ of the City becoming effective.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the ____ day of _____, 2004.

R. Scott Wheeler, Mayor'

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS §
 §
 §
COUNTY OF DALLAS §
 §

DECLARATION OF EASEMENT
AND AGREEMENT

This Declaration of Easement and Agreement (sometimes referred to herein as the "**Agreement**") is made this ____ day of _____, 2004 ("**Agreement Date**") by Crescent Real Estate Equities Limited Partnership, a Delaware limited partnership (hereinafter sometimes called "**Crescent**").

Recitals:

1. Crescent is the owner of two contiguous tracts of land located within the Town of Addison, Texas (the "**City**"). An office building is constructed on each of the respective tracts, with the building on the most southerly tract bearing the name "Liberty Plaza I," and the building on the most northerly tract bearing the name "Liberty Plaza II." For purposes hereof, the most southerly tract or lot is referred to herein as "**Liberty Plaza I**" and the most northerly tract or lot is referred to herein as "**Liberty Plaza II**," and they are referred to together as the "**Tracts**."

2. The Final Plat for and description of Liberty Plaza I is filed of record in Volume 80140, Page 1720 of the Dallas County Map Records, and the Final Plat for and description of Liberty Plaza II is filed of record in Volume 84178, Page 2807 of the Dallas County Map Records (collectively, the "**Final Plats**"). True and correct copies of the Final Plats are attached hereto as Exhibit 1 and Exhibit 2, respectively.

3. Crescent currently owns both of the Tracts, and has entered into a Contract of Sale to sell both of the Tracts to a prospective purchaser ("**Purchaser**"). In the process leading up to the sale of Liberty Plaza I and Liberty Plaza II, it became apparent that Liberty Plaza I did not have sufficient off-street parking as required by the City's Comprehensive Zoning Ordinance (the "**Zoning Ordinance**," being Appendix A-Zoning to the City's Code of Ordinances):

(a) Liberty Plaza I and Liberty Plaza II are each zoned according to the "C-1 Commercial -1 District" ("**C-1**") as set forth in the Zoning Ordinance. The C-1 standards require that a building used for office purposes which contains 50,000 square feet of space or more must have an off-street parking ratio equal to one space per 300 square feet of net usable area.

(b) Based on the C-1 parking regulations:

(i) Liberty Plaza I, based on the actual use of Liberty Plaza I as of the Agreement Date ("**Existing Use**"), is required to and should have at least 329 off-street parking spaces located on and within the Liberty Plaza I lot (the "**Minimum Off-Street Parking**"); however, Liberty Plaza I only has 92 off-street parking spaces; and

(ii) Liberty Plaza II, based on the actual use of Liberty Plaza II as of the Agreement Date, is required to and should have at least 397 off-street parking spaces

located on and within the Liberty Plaza II lot; parking on Liberty Plaza II exceeds that number by 253 spaces, so that Liberty Plaza II has 650 off-street parking spaces.

4. The failure of Liberty Plaza I to comply with the off-street parking standards may result in the loss of the use of a part of Liberty Plaza I, as the City has the authority to withhold building permits, certificates of occupancy, and/or other permits related to the use or occupancy of the premises for any square footage of the premises for which there is not sufficient parking.

5. In order to seek to comply with the C-1 parking regulations for the Existing Use of Liberty Plaza I and in connection with the sale and transfer of Liberty Plaza I and Liberty Plaza II by Crescent to Purchaser, Crescent desires to permit Liberty Plaza I to use certain parking spaces (the "**Parking Spaces**", totaling 237 in number) located on Liberty Plaza II for off-street parking purposes, together with a right of ingress and egress between the Tracts permitting access to the Parking Spaces. The Parking Spaces and the area of ingress and egress are described and depicted on Exhibit 3 attached hereto and incorporated herein (the "**Easement Property**").

6. Crescent, as Grantor hereunder, desires to declare and impress upon the Easement Property the Easement granted herein for the benefit of itself and any and all future owners and/or mortgagees of either or both of the Tracts, and their respective successors and assigns. The Easement granted herein shall run with the land and it is Crescent's intent that the doctrine of merger specifically not apply and that the Easement granted herein shall not be extinguished by virtue of the common ownership of both Tracts.

7. This Agreement is made by Crescent as a condition precedent to the sale of Liberty Plaza I and Liberty Plaza II to Purchaser to achieve the purposes set forth in Paragraph 5 of these Recitals and elsewhere in this Agreement.

NOW, THEREFORE, for and in consideration of the above and foregoing Recitals, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, Crescent, as the current owner of Liberty Plaza I and Liberty Plaza II, intending to be legally bound, hereby agrees as follows:

Section 1. Grant of Easement.

For the consideration set forth above and herein, the receipt and sufficiency of which is hereby acknowledged and confessed, Crescent, as owner of Liberty Plaza II (in such capacity, "**Grantor**"), has **GRANTED, SOLD AND CONVEYED**, and by these presents does **GRANT, SELL AND CONVEY** unto Crescent, as owner of Liberty Plaza I in such capacity, "**Grantee**"), a perpetual and exclusive easement to use 237 off-street Parking Spaces located on Liberty Plaza II for off-street parking purposes, together with a right of ingress and egress between the Tracts on, over and across the Easement Property for the purpose of permitting access to the Parking Spaces (the "**Easement**") in accordance with the terms and conditions set forth in this Agreement.

TO HAVE AND TO HOLD the Easement, together with all and singular the rights, privileges, and appurtenances thereto in anywise belonging, unto Grantee, its heirs, personal representatives, successors and assigns; and Grantor does hereby bind itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** all and singular the Easement unto Grantee, its heirs, representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Section 2. Easement Appurtenant, Running With Land; Use. The Easement granted herein shall be deemed appurtenant to Liberty Plaza I, and shall be deemed a covenant running with the land with respect to both Tracts, and Crescent, understands and agrees that this Agreement shall fully bind and inure to the benefit of Grantor and Grantee, future owners and mortgagees of either Tract and their respective heirs, personal representatives, successors and assigns, each of whom shall be bound to abide by this Agreement.

Grantee may permit and convey the benefit and use of the Easement to its representatives, employees, agents, guests, licensees, invitees, tenants and lessees, and guests and invitees of tenants and lessees, who reside on or use Liberty Plaza I.

Section 3. Obstruction. Grantor, its successors and assigns, shall not and shall be prohibited from at any time erecting or placing, or permitting or allowing to be erected or placed, any fence, wall, pole, pipe, post, building, facility, or other structure, or any obstruction, which would prevent or have the effect of preventing free vehicular access to and over the Easement Property to and from Liberty Plaza I, except as may be necessary for temporary periods for life/safety or repair or maintenance obligations.

Section 4. Maintenance; Indemnity. Grantor shall repair, reconstruct, and maintain the Easement Property in good condition at its sole cost and expense; however, Grantee shall reimburse Grantor for any damage (normal wear and tear excepted) to the Easement Property caused by Grantee or its representatives, employees, agents, guests, licensees, invitees, tenants and lessees, and guests and invitees of tenants and lessees, who reside on or use Liberty Plaza I (the "**Grantee Parties**"). Grantee shall defend, indemnify and hold harmless Grantor from and against all loss, liability, damage, cost and expense (including reasonable attorney's fees and expenses) arising related to any personal injury, death or property damage arising from the use of the Easement Property by any of the Grantee Parties unless caused by the gross negligence or willful misconduct of Grantor or its representatives, employees, agents, guests, licensees, invitees, tenants and lessees, and guests and invitees of tenants and lessees, who reside on or use Liberty Plaza II.

Section 5. Default. If a party shall default in the performance of an obligation under this Agreement, then the non-defaulting party shall, in addition to all other remedies it may have at law, in equity, or otherwise, after ten (10) days prior written notice to the defaulting party, have the right (i) to perform such obligation on behalf of the defaulting party and shall be entitled to reimbursement from the defaulting party for all reasonable costs and expenses incurred by the non-defaulting party in performance of such obligation, and (ii) to sue for specific performance and/or injunctive relief. Notwithstanding the foregoing, no breach of the provisions of this Agreement shall entitle, authorize, or give the right to any party to cancel, rescind or otherwise terminate this Agreement.

Section 6. Enforcement; Third Party Beneficiary.

A. This Agreement is intended to benefit, inures to the benefit of, and is enforceable by: (i) Crescent and any and all future owners or mortgagees of either or both of the Tracts, and (ii) the City (as a third-party beneficiary hereto) at the City's election and in its sole discretion.

B. If Liberty Plaza I is at any time being operated or used in violation of this Agreement (e.g., if Liberty Plaza I does not have the Minimum Off-Street Parking), the Building Official of the City may, in accordance with any applicable City ordinances, revoke the certificate of occupancy for Liberty Plaza I, and the City may withhold the issuance of and/or revoke building permits or other permits or authorizations related to the use or occupancy of Liberty Plaza I. Grantor and Grantee acknowledge that the City has the right, at its election and in its sole discretion, to enforce this Agreement by any means whatsoever, including filing an action in a court of competent jurisdiction, at law, in equity, or otherwise, against any party or person violating or attempting to violate this Agreement, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce this Agreement against any party or person, Grantor and Grantee agree that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs from that party or person.

C. Grantor and Grantee agree to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims or liabilities of kind or nature whatsoever arising out of or in conjunction or connection with this Agreement and the City granting, revoking, or withholding a certificate of occupancy, building permit, or other permit or authorization related to the use or occupancy of Liberty Plaza I, by reason of this Agreement. The obligation set forth in this subsection C. shall survive the termination, expiration, or cancellation of this Agreement.

Section 7. Amendment, Termination.

A. This Agreement may be amended or terminated only upon the filing, in the Deed Records of the county or counties in which Liberty Plaza I and Liberty Plaza II are located, of an instrument executed by the owner or owners of Liberty Plaza I and Liberty Plaza II, consented to in writing by any mortgagee of either or both of the Tracts, and approved by the City Council of the City and approved as to form by the City Attorney. The City Council shall approve an instrument amending or terminating this Agreement if:

- (1) all uses on Liberty Plaza I for which parking is provided under this Agreement fully comply with the off-street parking regulations of the City, as the same may be amended from time to time, by a means other than this Agreement; or
- (2) all uses on Liberty Plaza I for which parking is provided under this Agreement cease to operate and terminate their certificates of occupancy.

Grantee shall file the amending or terminating instrument in the Deed Records of the county or counties in which Liberty Plaza I and Liberty Plaza II are located at the sole cost and expense of Grantee. After filing the amending or terminating instrument in the said Deed Records, Grantee

shall file two copies of the instrument with the City Building Official. No amendment or termination of this Agreement is effective until the amending or terminating instrument is filed in accordance with this Section.

B. In the event that this Agreement is terminated for any reason (except in accordance in Section 7.A. above), the parties recognize, understand, and agree that the City, upon becoming aware thereof and through the City Building Official or other person designated by the City Manager, may revoke the certificate of occupancy for Liberty Plaza I and may further withhold the issuance of and/or revoke building permits or other permits or authorizations related to the use or occupancy of Liberty Plaza I, to the extent of the failure of Liberty Plaza I to conform to applicable off-street parking requirements of the City. The provisions of this subsection B. shall survive the termination, expiration, or cancellation of this Agreement.

Section 8. Liens or Mortgages. Grantor certifies and represents that there are no liens or mortgages, other than liens for *ad valorem* taxes, against its respective Tracts if there are no signatures of lienholders or mortgagors set forth below.

Section 9. Miscellaneous.

A. No consent to modification or termination of the provisions of this Agreement shall ever be required of any tenant, lessee, agent, employee, guest or licensee of Liberty Plaza I, or any customer, guest or invitee of any such tenant or lessee of Liberty Plaza I. In addition, no tenant, lessee, agent, employee, guest or licensee of Liberty Plaza I, nor any customer, guest or invitee thereof, shall have any right to enforce any of the provisions of this Agreement.

B. Notwithstanding any other provision of this Agreement, Grantee shall have no rights or entitlement to any condemnation award or insurance proceeds (or any property in lieu thereof) payable with respect to Liberty Plaza II or the Easement Property.

C. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Property to the general public or for any public use whatsoever.

D. In the event of any action under this Agreement, venue shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas govern the validity, construction, enforcement and interpretation of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

E. This Agreement shall be binding upon and inure the benefit of the parties and their respective heirs, executors, representatives, successors, and assigns.

F. The failure by any party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof.

G. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. The said rights and remedies are given in addition to any other rights the parties may have by law, equity, or otherwise.

H. Any rights and remedies arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

I. In connection with this Agreement, each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

J. This Agreement contains the entire agreement between the parties relating to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

K. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

L. All notices provided for or permitted under this Agreement shall be in writing and shall be (a) delivered personally; (b) sent by commercial overnight courier with written verification of receipt; or (c) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the person to be notified, at the address for such person set forth below or at such other address as is indicated in writing by such person. All notices shall be deemed effective upon receipt.

To Grantor and Grantee:

Crescent Real Estate
Equities Limited Partnership
777 Main Street, Suite 2100
Fort Worth, Texas 76102
Attn: Mr. Ken Moczulski and
Daniel E. Smith, Esq.
Facsimile: (817) 321-2010

WITH A COPY TO:

Jackson Walker L.L.P.
301 Commerce Street, Suite 2400

Fort Worth, Texas 76102
Attn: Susan A. Halsey
Facsimile: (817) 334-7290

The Recitals to this Agreement are all true and correct and are incorporated into and made a part of this Agreement for all purposes.

M. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

N. This Agreement shall be filed of record in the Dallas County Deed Records upon its execution, and shall not be effective until such time as it is recorded. Promptly following its recording of this Agreement, Crescent shall file with the City a fully executed true and correct copy of this Agreement as recorded.

CRESCENT:

CRESCENT REAL ESTATE EQUITIES
LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Crescent Real Estate Equities, Ltd.,
a Delaware corporation,
its general partner

By: _____
Name:
Title:

THE STATE OF TEXAS

§
§

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 2004, by _____, _____ of Crescent Real Estate Equities, Ltd., a Delaware corporation, the general partner of Crescent Real Estate Equities Limited Partnership, a Delaware limited partnership, on behalf of said partnership.

Notary Public – State of Texas

My commission expires: _____

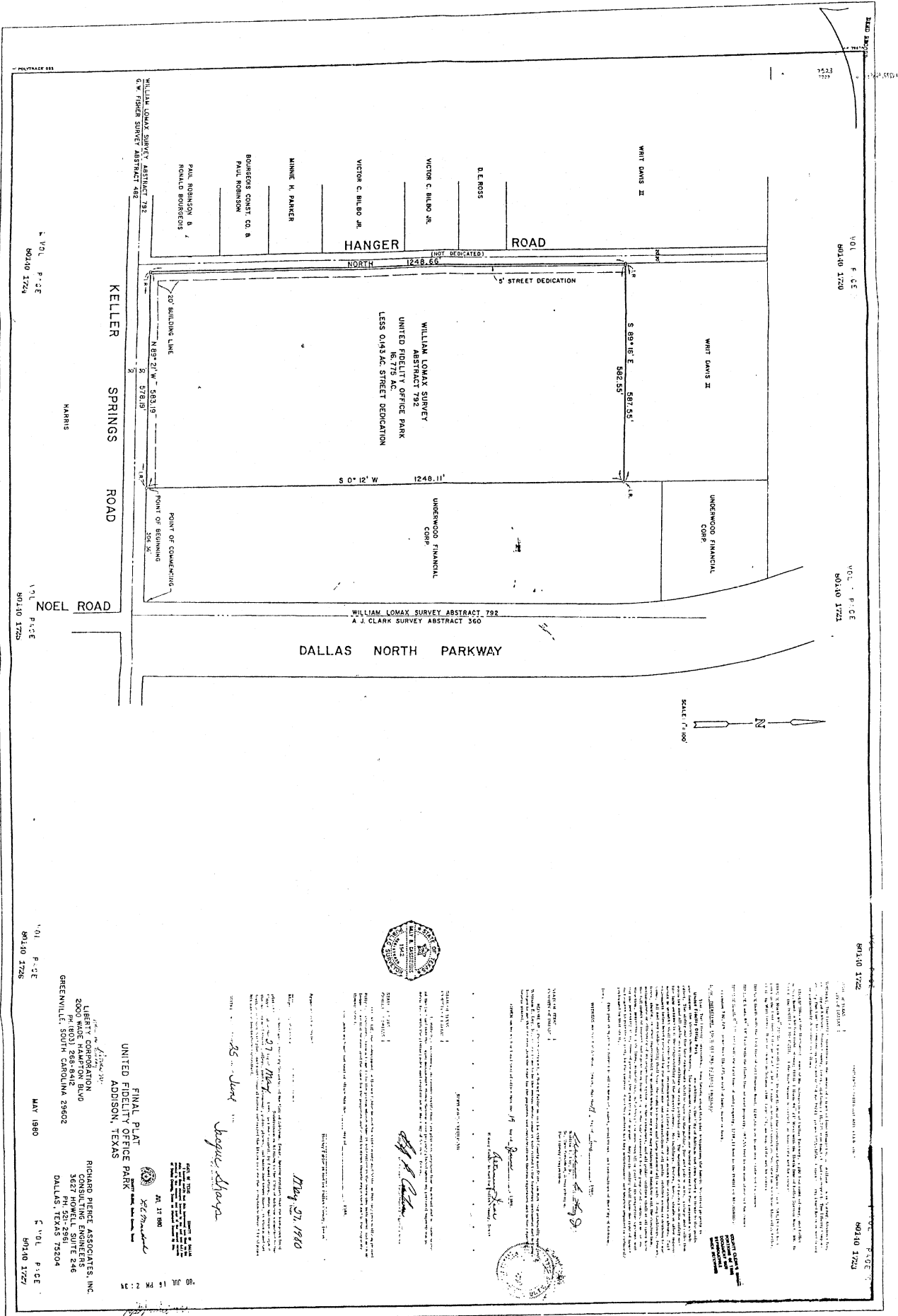
Acceptance by Town of Addison, Texas

The Town of Addison, Texas ("City"), solely as a third party beneficiary, hereby accepts the benefits due, and terms and conditions applicable to, the City as set forth in the above and foregoing Agreement. Further, as the City Council of the City, pursuant to Article II, Section 3 of the City's Comprehensive Zoning Ordinance (the same being Appendix A - Zoning of the City's Code of Ordinances), has authorized an alternate location for a portion of the required off-street parking spaces for Liberty Plaza I as set out in the Agreement, the City hereby acknowledges that, regardless of the ownership of either Tract, so long as the said Agreement remains in full force and effect and the Parking Spaces are actually available to Liberty Plaza I for parking purposes pursuant to and in accordance with the terms and conditions of the Agreement, the City will not deny building permits, certificates of occupancy and/or other permits related to Liberty Plaza I on the basis that the number of off-street parking spaces located within the boundaries of Liberty Plaza I is not in conformity with the off-street parking provisions of the City applicable to Liberty Plaza I; provided, however, that if after the Agreement Date the use of Liberty Plaza I is changed or increased such that, as a result of such change or increase, there is not adequate off-street parking for the changed or increased use under the then applicable parking standards of the City, the City may deny building permits, certificates of occupancy and/or other permits related to the changed or increased use.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

EXHIBIT 1



STATE OF TEXAS
COUNTY OF DALLAS
I, the undersigned, a duly qualified and sworn Surveyor for the State of Texas, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in the records of the County of Dallas, State of Texas.

WITNESSED my hand and the seal of the County of Dallas, State of Texas, this 15th day of May, 1980.

[Signature]
Surveyor

May 31, 1980
J. H. Clark
J. H. Clark

LIBERTY CORPORATION
2000 P. H. (R03) 268-8412
GREENVILLE, SOUTH CAROLINA 29602

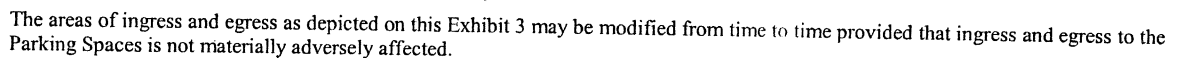
FINAL PLAT
UNITED FIDELITY OFFICE PARK
ADDISON, TEXAS

RICHARD PIERCE ASSOCIATES, INC.
CONSULTING ENGINEERS
3627 HOWELL SUITE 246
DALLAS, TEXAS 75204

MAY 1980

80 JUL 16 PM 2:31

55'43"E - 565.39'



The areas of ingress and egress as depicted on this Exhibit 3 may be modified from time to time provided that ingress and egress to the Parking Spaces is not materially adversely affected.

Council Agenda Item: #R7

SUMMARY:

This item is to terminate the contract with Oriental Building Services Inc., for custodial services at the Service Center, Police & Police sub-stations, Central Fire, Conference and Theatre Centre and Athletic Club facilities.

FINANCIAL IMPACT:

Cost: (\$75,456.00)

BACKGROUND:

Four bids were received for this contract. Oriental Building Services, Inc., was the low bidder and the contract was awarded to them February 24, 2004.

On March 5, 2004, several of the Oriental Building Services employees were taken into custody for questioning by agents of the Department of Homeland Security in reference to immigration and customs violations. It was later determined that information provided to the Town by some of these individuals for security clearance access to our buildings was fraudulent. The specifications for this contract requires vendors to comply with all federal, state, and local laws, ordinances, rules and regulations and to ensure that their employees are authorized to work in the United States, as required by the Immigration Reform and Control Act of 1986. Based on this, staff terminated the contract with Oriental Building Services on March 8, 2004.

RECOMMENDATION:

Staff recommends terminating the contract in the amount of \$75,456 to Oriental Building Services, Inc.

Attachments: Termination Letter
Resolution

MA

FINANCE DEPARTMENT/PURCHASING DIVISION 5350 Belt Line Road (972) 450-7091
E-mail msuh@ci.addison.tx.us Facsimile (972) 450-7096 P.O. Box 9010 Addison, Texas 75001

March 8, 2004

Mr. Nixon Shum
Oriental Building Services
2640 Northhaven Rd, Suite 105
Dallas, TX 75229

RE: Termination Custodial Services for the Town of Addison, Bid 04-01

Dear Mr. Shum:

The Town of Addison will have to terminate your contract immediately. As per our requirements in the specification section 13.0 Personnel:

The Contractor shall take all steps necessary to ensure that all of the Contractor's employees are authorized to work in the United States, as required by the Immigration Reform and Control Act of 1986.

Please make arrangements to return Town keys and remove your equipment and/or supplies from the Town facilities. Send final invoices for the work already performed.

If you have any questions or if I can be of assistance to you, please contact me at 972-450-7091.

Sincerely,

Minok Suh
Purchasing Coordinator

Copy: Mark Acevedo, Director of Facilities and Fleets
John Godley, Supervisor Facilities
Rob Bourestom, Manager ACTC
Randy Rogers, Manager AAC

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, TERMINATING AND CANCELING THE CITY'S CONTRACT AGREEMENT WITH ORIENTAL BUILDING SERVICES FOR SPECIFIED CUSTODIAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 24, 2004, the Town of Addison ("City") entered into a Contract Agreement ("Agreement") with Oriental Building Services ("Contractor") for specified custodial services, said Agreement attached hereto as Exhibit A; and

WHEREAS, Section 13.2 of the City's bid request, made a part of the Contract Documents pursuant to the terms of the Agreement, provides that the Contractor shall take all steps necessary to ensure that all of Contractor's employees are authorized to work in the United States, as required by the Immigration Reform and Control Act of 1986; and

WHEREAS, Section 21.0 of the City's bid request provides that the Contractor agrees to comply with all laws, ordinances, rules, and regulations – Federal, State, County, City; and

WHEREAS, the City, having discovered that the Contractor is or was not in compliance with the above-referenced provisions of the Agreement, finds that it is in the public interest to terminate the Agreement with Oriental Building Services immediately; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. That, as noticed in its March 8, 2004 letter to Oriental Building Services, the Town of Addison hereby terminates and cancels the Agreement, attached hereto as Exhibit A, with Oriental Building Services for specified custodial services.

Section 2. That this resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED this 23rd day of March, 2004.

Scott Wheeler, Mayor
Town of Addison, Texas

ATTEST:

APPROVED AS TO FORM:

Carmen Moran, City Secretary

Ken Dippel, City Attorney

EXHIBIT A
TOWN OF ADDISON, TEXAS

CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this the 24 day of February 24, 2004, by and between the TOWN OF ADDISON, a municipal corporation located in the County of Dallas, State of Texas, hereinafter termed "Owner," and Oriental Building Services of the County of Dallas, Texas, hereinafter termed "Contractor."

In consideration of the mutual covenants herein contained, the Owner and Contractor agree as follows:

1. Contractor shall perform the following described work:
Custodial Services as specified in the contract documents (hereinafter called the "Work"). The Work shall be performed at: **The Town's various buildings** as specified in the contract documents.

2. Contractor shall perform the Work in accordance with the Contract plans and specifications set forth in Owner's bid request, together with any addenda or modifications thereto and Contractor's response to such bid request, all of which are hereinafter termed "Contract Documents." This agreement, the Contract Documents, Business Services Bond and Certificates of Insurance, all of which are attached hereto and made a part hereof, shall collectively evidence and constitute the entire agreement between Owner and Contractor.

3. The parties hereto intend that the documents include provisions for all labor, materials, equipment, supplies and other items necessary for the execution and completion of the Work and all terms and conditions of payment.

4. Contract term is March 1, 2004, through February 28, 2005. At the sole discretion of the Owner with the Contractors consent, the contract may be extended for two twelve-month periods, under the same terms and conditions as the original contract documents.

5. The Owner agrees to pay Contractor in current funds:

\$6,288.00 per month, \$ 75,456.00 for the each twelve-month term of the contract, the price set forth in the proposal, which forms a part of this Contract. Such payments shall be subject to Contractor's performance of all terms and conditions of the Contract Documents.

6. This contract or any portion thereof may not be assigned or sublet to another party without the written consent of the Town of Addison. The Town may assign this contract without the contractor's permission.

IN WITNESS WHEREOF, the parties have executed this agreement
the year and day first above written.

OWNER:

TOWN OF ADDISON

By R. Whitehead

Title: City Manager

Attest: CM Moran

Title: City Secretary

Address for Giving Notices:

To Owner:

Town of Addison
P.O. Box 9010
Addison, Texas 75001-9010

CONTRACTOR:

Oriental Building Services

By Sangji Gye

Title: President

Attest: Min Shun

Title: Vice President

To Contractor:

Oriental Building Services
2640 Northhaven Rd., Suite 105
Dallas TX 75229

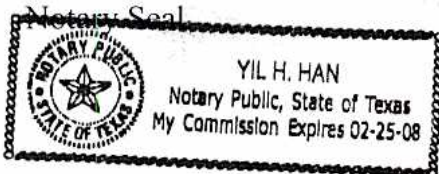
By authority of Council action dated February 24, 2004

Sang J. Gye, of lawful age, being first duly sworn, an oath says that he/she is the
agent authorized by Contractor to submit the above contract to the Town of Addison.

Affiant further states the Contractor has not paid, given, or donated or agreed to pay, give or donate to
any officer or employee of the Town of Addison any money or other thing of value, either directly or
indirectly, in procuring of the Contract.

Affiant's Signature: Sangji Gye

Subscribed and sworn to before me this 27th day of Feb., 2004.



[Signature]
Notary Public for the State of Texas

YIL HAN
Type/Print Name of Notary if not part of seal

2/25/08 Enter date commission expires if not part of seal

Council Agenda Item: #R8

SUMMARY:

Council approval is requested for the award of bid to James Enterprise, for custodial services for Town facilities in the amount of \$78,048.00.

FINANCIAL IMPACT:

Cost: \$78,048.00

Funds are budgeted and available in each department's operating budget.

BACKGROUND:

The Town contracts with outside vendors for custodial cleaning services for the Service Center, Police & Police sub-stations, Central Fire, Conference and Theatre Centre and Athletic Club facilities. Typically, the Conference & Theatre Centre and Athletic Club are bid individually and apart from the other facilities as the managers of each of those facilities supervise those contractors directly due to the operations of these facilities. At this time, contracts for all the facilities have expired simultaneously and staff chose to bid all the contracts together with the hope of achieving some economies of scale while maintaining the individual department control at these facilities.

The Purchasing Division sent out 178 notifications to contractors through DemandStar with 37 contractors obtaining specifications and 13 attending the pre-bid conference and facilities tour. We received eight bids. Four bids were disqualified. The lowest bid was from Oriental building Services, who was subsequently terminated because of contract violations. James Enterprises, Inc., submitted the second low bid (\$78,048). Staff has received favorable references for James Enterprises and background checks on their employees have been completed by the Addison Police Department.

RECOMMENDATION:

Staff received favorable references for James Enterprise, Inc. Staff recommends that Council approve the award of bid to James Enterprise, Inc., in the amount of \$78,048.00.

Attachments: Bid Tab

MA

	Oriental Building Services	James Enterprise	Members	Jani King
Signed	yes	yes	yes	yes
*Bid Bond	b	c	b	c
	Option 2/per month	Option 2/per month	Option 2/per month	Option 2/per month
Section A-				
Svc Cnter	\$1,018	\$1,427	\$1,208	\$1,843
Fire Station 1	\$355	\$360	\$263	\$560
Police Station	\$1,565	\$1,500	\$1,903	\$2,733
Sub Station 1	\$65	\$100	\$50	\$190
Sub Station 2	\$75	\$100	\$50	\$190
Section B				
ACTC	\$1,780	\$2,312	\$2,070	\$4,513
Pavilion	\$280	\$205	\$720	\$375
Section C				
Athletic Club	\$1,150	\$500	\$810	\$972
Total for Month	\$6,288	\$6,504	\$7,074	\$11,376
Pavilion as needed				
Full Restroom	75 per cleaning	50 per cleaning	30 per cleaning	50 per cleaning
As needed Pavilion	125 per cleaning	75 per cleaning	30 per cleaning	50 per cleaning

All Bidders Disqualified					
Andrews	Beyond Cleaning Solutions	Inside & Out		GBM	
yes	yes	DISQUALIFIED		DISQUALIFIED	
b	no	NOT SIGNED		NOT SIGNED	
Option 2/per month	Option 2/per month	opt 1	opt 2	opt1	opt2
\$1,012	\$1,006	no bid		\$1,645	
\$400	\$360	no bid		\$288	
\$1,477	\$1,059	no bid		\$2,492	
\$200	\$160	no bid		\$55	
\$200	\$168	no bid		\$75	
\$2,488	\$2,093	\$2,700		\$2,641	
\$784	\$250	\$750		\$263	
\$927					
\$927	\$750	\$885		no bid	
\$8,415	\$5,846			no bid	
45 per cleaning	30 per hour	\$85.00	per cleaning	\$35.00	per cleaning
39 per cleaning	30 per hour	\$285.00	per cleaning	\$15.00	per cleaning
Not qualified to bid Section A:Did NOT attend Pre Bid Meeting	Current Contractor for Section B&C that has not followed through with cleaning requirements				



Minok Suh, Purchasing Coordinator

*Bid Bond c-cashiers check



Corey Gayden, Witness

Option 1- This was by individual location bid, if awarded by section
Option 2- discount for bid awarded in total to one company

Council Agenda Item: #R9

SUMMARY:

Approval of a resolution implementing a new program for David Green e-mail campaign.

FINANCIAL IMPACT:

Budgeted Amount: \$36,000

Cost: \$36,000

BACKGROUND:

This new program is designed to assist Addison full-service hotels in booking new business via an e-mail campaign to a list of 5,000 meeting planners.

The program has the potential of booking approximately 6,000 room nights over five months for Addison hotels.

The David Green Organization has offered the town a free e-mail blast to a list of 5,000 planners in their database whose meetings profile fit Addison. In the e-mail, Addison will offer planners an amenity worth up to \$5,000 if they hold a meeting in an Addison hotel in June, July, or August 2004. This program will mirror our existing successful Addison Support program where the Town of Addison and the host hotel share in the cost of the amenity. The Addison full-service hotels would pick up 25 % of the amenity cost and Addison would pick up the other 75%.

The maximum amount of the Town's portion of the amenity would be up to \$5,000 per meeting with a cap of \$36,000 for the entire program. 57% of groups who receive these funds in the current hotel support program are for amounts under \$5,000.

The types of amenities offered are food and beverage events at the hotels, audiovisual equipment, rentals, local transportation, welcome banners, participant bags, and VIP gifts.

Money for this one time campaign will be reallocated from the David Green Telemarketing program. This new program potential offers a much better return on investment.

RECOMMENDATION:

Staff recommends approval. The Addison full-service hotels helped in the development of the new program.

Council Agenda Item: #R10

SUMMARY:

In an effort to improve recruitment, we seek Council approval for a proposed change to our current police officer applicant qualifications and pay.

FINANCIAL IMPACT:

Budgeted Amount: N/A

Cost: \$15,280 (per cadet)

BACKGROUND:

For some time now, despite our best efforts, the Addison Police Department has been experiencing a reduction in our police officer applicant pool. In an effort to be more competitive and increase the number of qualified police applicants, we are recommending a change to our current practice of recruiting and hiring only licensed Texas peace officers. Most of the law enforcement agencies in the DFW area do not require applicants to be licensed prior to employment consideration. The following information represents our current and proposed hiring requirements in reference to licensing, college standards and pay regarding our police officer application process:

Current Requirements

- Licensed Texas Peace Officer
- 30 hours of college (Accredited)
- \$18.57 - \$20.07 hourly depending on qualifications and experience

Proposed Requirements

- Licensed Texas Peace Officer & 30 college hours
Or
- Bachelor's degree (Accredited) &
Create new Cadet hourly rate of \$17.85

Should an applicant be selected with a Bachelor's degree only, we would then have to send the cadet to 1 of 4 local police academies, at our expense. The academy is twenty weeks at a cost of \$1,000. We would also have to pay the proposed police cadet starting hourly rate of \$17.85 (consistent with incremental increases in beginning salaries) while attending the police academy (\$14,280) with an upgrade to \$18.57 hourly upon successful completion of the academy.

We have worked with our Human Resources Department in researching and developing this proposal.

RECOMMENDATION:

Staff recommends approval.

Council Agenda Item: #R11**SUMMARY:**

Presentation and discussion regarding the execution of a Memorandum of Understanding (MOU) between the Dallas Area Rapid Transit (DART) Police Department and the Addison Police Department clarifying jurisdictional police operations on DART related matters within the Town of Addison.

FINANCIAL IMPACT:

Budgeted Amount: N/A

Cost: None

BACKGROUND:

In 1990, Chief Rodriquez of DART met with DART member city police chiefs to develop and implement a MOU for operational intent. The MOU identified basic police responsibilities between DART police and DART member city police departments. In 1993, an updated version of the agreement was prepared and resubmitted to the chiefs for signature. That MOU remained in place for ten years. In November 2003, the agreement was updated again and sent to DART member city police chiefs for their signature.

As with previous agreements, the 2003 MOU clarifies language, delineates police responsibilities between DART police and DART member city police departments, outlines the jurisdictional restraints of DART police, and clarifies the method of police operations. The agreement has changed little over the years and the Addison Police Department continues to have primary law enforcement jurisdiction on DART related matters within the Town of Addison. On November 25, 2003, the DART Board of Directors approved a resolution authorizing the execution of the updated MOU with member city police chiefs. Chief Franklin of the Addison Police Department and Chief Rodriquez of the DART Police Department have agreed to the MOU and affixed their signatures to the agreement.

The Town Attorney has reviewed the MOU.

RECOMMENDATION:

Council review the agreement between the DART Police Department and Addison Police Department. No formal Council action is required.

MEMORANDUM OF UNDERSTANDING
BETWEEN
ADDISON POLICE DEPARTMENT
AND
DALLAS AREA RAPID TRANSIT POLICE DEPARTMENT

This Memorandum of Understanding is entered into with the cooperative objective of providing police services to the Dallas Area Rapid Transit (DART) authority, its patrons, employees, and properties. The purpose of this Memorandum of Understanding is to delineate police responsibilities between DART Police and Addison Police Department.

The police agencies hereto agree that the policing concept hereafter outlined will be accomplished within the jurisdictional restraints of DART Police under the Texas Transportation Code Section 452.110 which states:

- (a) The (DART) executive committee may establish a security force and provide for the employment of security personnel.
- (b) The executive committee may commission an employee of a security force established under Subsection (a) as a peace officer.
- (c) A peace officer commissioned under Section (b), except as provided by Subsection (e), has all the rights, privileges, obligations, and duties of any other peace officer in this state while on the property under the control of the authority or in the actual course and scope of the officer's employment.
- (d) A person commissioned under Section (b) must give an oath and make bond for the faithful performance of the officer's duties as the executive committee may require. The bond shall be filed with the executive committee and made payable to the authority. The bond must be approved by the executive committee.
- (e) A law enforcement power granted under this section is subordinate to the law enforcement power of a municipality in which the power is attempted to be exercised.

A. DEFINITIONS

- 1. DART means the Dallas Area Rapid Transit authority.
- 2. DART officer(s) means a peace officer as authorized under the Code of Criminal Procedure, Art. 2.12 (22) and commissioned by DART.
- 3. Addison Police means an officer of the Addison Police Department.

B. RESPONSIBILITIES

1. Addison Police continue to have primary law enforcement jurisdiction on DART related matters within the City of Addison, and may provide police services on DART related matters including but not limited to:
 - Patrolling transit property
 - Answering transit related calls for service
 - Preparing offense reports
 - Making arrests
 - Conducting follow-up criminal investigations
2. DART officers are dedicated to providing police services to DART, its patrons, employees, systems and properties including but not limited to:
 - Buses, bus routes, bus stops and transfer centers
 - Trains, rail stations, corridors and tunnel
 - HOV lanes
 - DART facilities, buildings, parking lots and transit centers
 - DART special events
3. DART officers may handle activities such as but not limited to:
 - Resolving conflicts and disturbances
 - Rendering public assistance
 - Rendering first aid and/or calling for emergency medical services
 - Investigating offenses and accidents
 - Protecting crime scenes
 - Arresting suspects and detaining witnesses
 - Relinquishing crime scenes, suspects, witnesses, and related evidence and information to Addison Police upon their request
 - Remaining at crime scenes to assist Addison Police if necessary
4. DART officers are expected to direct their attention to DART related matters. Law enforcement activities by DART officers must focus on matters that directly impact the delivery of DART services. DART officers are not expected to engage in a matter not occurring in conjunction with, not associated with, and/or not connected to DART.
5. DART officers are deployed to carry out their responsibilities through patrol operations and by responding to calls for service. In any call, situation, incident, scene or event where responsibilities are not addressed in this Memorandum of Understanding, DART officers are authorized and expected to yield responsibility for the call, situation, incident, scene or event to Addison Police upon their arrival.

C. METHOD OF OPERATION

The following guidelines apply to answering DART related calls for service.

1. Field Operations

- (a) As a general rule, DART officers are authorized to respond to calls for service and may handle misdemeanor and felony crimes unless Addison Police Department assumes responsibility for the incidents.
- (b) The Addison Police Department responds to felony-in-progress calls and have primary jurisdiction on felony crimes against persons. These offenses include, but are not limited to: homicide, suicide, unexplained deaths, sexual assaults, officer-involved shooting incidents, hostage situations and the criminal attempt of these offenses. DART officers may also respond to control the situation, protect the crime scene, render first aid, detain suspects and witnesses, or provide other services until the Addison Police Department arrives.
- (c) E-911 calls received by the City of Addison related to DART may be forwarded to DART Police. The Addison Police Department may respond to E-911 DART related calls at their discretion. DART officers may handle E-911 hang-ups related to DART.
- (d) DART officers may continue to enforce traffic regulations pertinent to their jurisdiction including high occupancy vehicle (HOV) lanes. DART officers may investigate minor accidents, and any major accident not assumed by the Addison Police Department.
- (e) DART officers may transport to the appropriate detention facility and book any prisoners they arrest.


2. Follow-Up Investigations

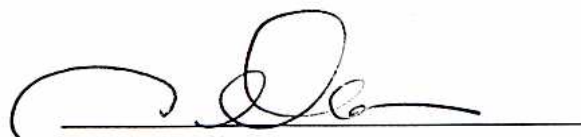
- (a) Follow-up criminal investigations including physical evidence investigations at crime scenes will generally not be handled and completed by the DART Police Department unless Addison Police Department waives responsibility to DART officers. DART officers will provide assistance to Addison Police Department as requested during follow-up investigations.
- (b) DART Police may file cases in the appropriate jurisdiction of DART related offenses that they handle.
- (c) DART Police may request assistance on offenses when it determines the expertise of the Addison Police Department may help in solving the case. The extent of involvement of Addison Police Department personnel is determined by the Addison Police Department Commander who has offense jurisdiction.
- (d) Upon request, each agency may keep the other informed on the progress of a DART related police matter.
- (e) The agency that handles the incident may submit statistical data to other criminal justice agencies as needed.

D. AUTHORITY

- (a) The undersigned represent that they have authority to enter into this Memorandum of Understanding.

Agreed to By:


Juan M. Rodriguez
Chief of DART Police
Date 12-30-03


Don Franklin
Chief of Addison Police
Date 1/12/04

Council Agenda Item: #R12

SUMMARY:

This item is to request the Council's approval of a contract with **TRICO Tower Service, Inc** to repair the outside communication towers at Police, and Fire departments. A copy of the contract is attached.

FINANCIAL IMPACT:

Budgeted Amount: **\$0**

Cost: **\$35,800**

The Capital Replacement fund budgeted \$1,200,000 in FY 2002-03 for the purpose of creating a public safety simulcast radio system. Since it is anticipated that the cost of the system will not exceed \$1,020,000, the savings realized from this project can be applied towards the cost of enhancing the grounding system for public safety equipment. This will be formally recognized with a mid-year budget amendment in late summer.

BACKGROUND:

Emergency Operation Center (EOC) incurred 3 lightening strikes in the early portion of last year. In all three (3) instances Radio Equipment and the Computer Aided Dispatch servers were hit. On September 2, 2003, Motorola performed a Quality Audit (R56) of the Town of Addison Fire Department and EOC facilities. The purpose of the audit was to provide the Town with a benchmark of the equipment/communication sites and generate a report solely for the purpose of assisting us in minimizing future system disruption or damage from lightening occurrences.

Motorola's site inspection revealed sub-standard conditions that have the potential to adversely affect the communications system and/or other sensitive electronic equipment. Motorola's report is divided into 4 categories:

1. Protection of Sensitive Network Equipment,
2. Protection of Sensitive Communication Equipment,
3. Enhancement for Existing Grounding System,
4. Protection from Lightening Occurrences and Power Anomalies

Based on our request Motorola drafted a proposal to address the aforementioned areas. Their proposal included a design solution for EOC and the Fire, Police departments. Their solution included grounding electrode system design, internal and external grounding and bonding, and surge suppression design. Due to the outrageously expensive cost of implementation, **\$145,169.00**, proposed by Motorola for Equipment, Project Management, System Technologist, Installation, and Warranty we started looking for an alternative implementer. Fortunately, it was during that process that we became aware of **TRICO Tower Service, Inc.** located in Houston, Texas. It was during

our conversation with TRICO, we realized that they were the sub-contractor that put the proposal together for Motorola and Motorola was planning to hire TRICO to do this project at Addison. They are certified Motorola contractor.

It should be noted that the Town's staff has already fixed the items noted in categories 1 through 3 by Motorola.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to enter into a contract with TRICO Tower Service, Inc., in an amount not to exceed \$35,800.00 to repair the outside communication towers at Police, and Fire departments.

QUOTE

TRICO TOWER SERVICE, INC.

4020 Creekmont

Houston, TX 77091

(713)681-8299 FAX (713)957-1106

QUOTE NO: Q-5949-A

DATE: February 10, 2004

TERMS: NET 30

TO: TOWN OF ADDISON
16801 Westgrove DR.
Addison, TX 75001

DESCRIPTION	UNIT PRICE	AMOUNT
SITE LOCATION: TOWN OF ADDISON, TX EOC and Police Department		
SCOPE OF WORK: A) SUPPLY AND INSTALL NEW GROUND SYSTEM TO TOWERS, GENERATORS, ENTRY PORTS, ETC., IN ACCORDANCE TO R-56 STANDARDS.		
B) SUPPLY AND INSTALL SURGE SUPPRESSION AT EOC AND FIRE DEPARTMENT AS OUTLINED ON WALK THROUGH FEBRUARY 6, 2004. NOTE: SURGE SUPPRESSION TO FOLLOW R-56 STANDARDS AS DIRECTED IN TASKS DEVELOPED BY OTHERS.		
C) REMOVE DEAD ANTENNAS COAX, HARDWARE, ETC., AT BOTH TOWER SITE LOCATIONS. SUPPLY AND INSTALL CLUSTER BRACKETS FOR REMAINING COAX, REATTACH TO BRACKETS, INSTALL NEW GROUND KITS AS NEEDED. ROUTE COAX TO EXISTING ENTRY PORTS, PROVIDE BUSS BARS AND GROUNDS. FOLLOW R-56 STANDARD WHERE APPLICABLE. REPLACE ANY COAX WITH HARDWARE THAT DOES NOT COMPLY.		
COST:		
<u>EOC BUILDING:</u> MATERIALS	\$	7,800.00
LABOR	\$	5,200.00
ADDITIONAL COST SURGE SUPPRESSION (MATERIALS)	\$	4,500.00
LABOR	\$	1,000.00
TRICO CHARGE MATERIALS ONLY 10 PERCENT	\$	450.00
MOBILIZATION	\$	1,550.00
<u>POLICE DEPARTMENT:</u> MATERIALS	\$	3,150.00
LABOR	\$	6,200.00
ADDITIONAL COST SURGE SUPPRESSION MATERIALS	\$	4,500.00
LABOR	\$	1,000.00
TRICO CHARGE MATERIALS ONLY 10 PERCENT	\$	450.00
NOTE: TRICO TOWER WILL REDUCE COST AND PRORATE INVOICE ON ANY COAX NOT REPLACED. QUOTE BASED ON NOT TO EXCEED.		
TOTAL QUOTE:	\$	35,800.00

Summary Report
Addison Fire Department EOC Area
EOC-090203
Date 09-02-2003

Legend

Red	Protection of Sensitive Network Equipment
Blue	Protection from Lightning Occurrences and Power Anomalies
Yellow	Protection of Sensitive Communication Equipment
Green	Enhancements for Existing Grounding System

EOC Equipment Room

- 1) The AWG #2 equipment ground bus conductor needs to be re-routed between the EOC equipment room and the main electrical room with the proper cable group separation [Picutres\R56- \(33\).JPG](#). The existing ground bus conductor should be cut in the electrical room so that a short section remains routed over to the workbench for the grounding of the 7/8 inch Heliac cable's surge protection device [Picutres\R56- \(34\).JPG](#); [Picutres\R56- \(35\).JPG](#). The remaining ground bus conductor needs to be removed from the PVC conduit and properly routed between EOC equipment room and the main electrical room. It needs to be re-established back to the referenced MGB or back to the existing non-jacketed, AWG #2, solid grounding electrode conductor with a flow towards the external grounding electrode system. If an extension of the ground bus conductor is required, the extension needs to be of the same size cable and it needs to be bonded back to the existing ground bus conductor with an irreversible crimping connection.
- 2) Several of the grounding conductors were not attached back to the ground bus system with a flow towards the grounding electrode system [Picutres\R56- \(49\).JPG](#). Each of the existing grounding conductors should be re-attached to the ground bus conductor so that they have a flow towards the external grounding electrode system.
- 3) The ground bus bonding connections were not properly insulated with electrical tape [Picutres\R56- \(50\).JPG](#). Each ground bus bonding connection needs to be properly insulated with green electrical tape or the proper type of insulating cover.
- 4) Primary SPDs were not installed on the cables that were routed between the Police Department building and the Fire Department EOC room [Picutres\R56- \(32\).JPG](#); [Picutres\R56- \(73\).JPG](#); [Picutres\R56- \(77\).JPG](#). Primary SPD units should be installed within 24 inches of where these cables enter the buildings and they need to be properly grounded back to each building's common ground bus system.
- 5) The cables, which were routed between the Police Department building and the Fire Department EOC room, did not have their shields grounded back to the equipment room's ground bus system at the cable entry locations [Picutres\R56- \(32\).JPG](#). When these cables have an outer metallic shield, only one end of the shield should be grounded. A transmission line ground kit needs to be installed cable's shield at the cable entry

location and it needs to be properly bonded back to the equipment ground bus system with the proper routing back to the external grounding electrode system.

- 6) The antenna cables, which were routed into the front section of the EOC room, are excessive in cable length and they were not equipped with surge protection devices where they entered the building or the equipment room [Picutres\R56- \(51\).JPG](#); [Picutres\R56- \(52\).JPG](#); [Picutres\R56- \(53\).JPG](#); [Picutres\R56- \(54\).JPG](#). A Surge Protection Device (SPD) needs to be properly installed on each of these cables within 24 inches of where the cable enters the building or the equipment room. Each of the SPDs needs to be properly bonded back to the equipment ground bus system with a green jacketed, AWG #6, copper conductor. The conductors need to be attached so that they provide a flow back towards the external grounding electrode system. Each antenna cable's excessive cable length needs to be removed when the SPDs are installed.
- 7) In the front section of the EOC room, most of the equipment and none of the metallic furniture was bonded back to the ground bus system [Picutres\R56- \(55\).JPG](#); [Picutres\R56- \(56\).JPG](#); [Picutres\R56- \(57\).JPG](#); [Picutres\R56- \(58\).JPG](#). To properly ground each individual system component and the metallic furniture at each operator position, a separate, green jacketed, AWG #2 ground bus extension needs to be properly installed for each operator location. These ground bus extensions need to be bonded back to the green jacketed AWG #2 equipment ground bus conductor with irreversible crimping connections and with a flow back towards the external grounding electrode system. The ground bus extensions need to be properly routed to each operator's position with the required 2 inch cable group separation. Each individual system component needs to be properly bonded back to the ground bus extension with a green jacketed AWG #6 grounding conductor. Each separate section of the metallic furniture needs to be properly bonded back to the ground bus extension with a green jacketed AWG #6 grounding conductor.
- 8) The headset jacks for the operator stations were not grounded back to the ground bus system [Picutres\R56- \(59\).JPG](#). Each metallic head set jack covering needs to be grounded back to the equipment ground bus system.
- 9) In the back section of the EOC room, none of the equipment racks or the individual system components of the networking equipment were grounded back to the equipment room's ground bus system [Picutres\R56- \(60\).JPG](#); [Picutres\R56- \(61\).JPG](#); [Picutres\R56- \(62\).JPG](#); [Picutres\R56- \(63\).JPG](#); [Picutres\R56- \(64\).JPG](#); [Picutres\R56- \(65\).JPG](#); [Picutres\R56- \(66\).JPG](#). Each individual system component's metallic housing should be bonded back to the equipment ground bus system with a green jacketed AWG #6 grounding conductor, whenever possible. Each equipment rack also needs to be grounded back to the rack's ground bus extension with a jacket AWG #6 grounding conductor. An example of this type of grounding configuration can be viewed in Figure 7-21, on page 7-39, of the R56 manual.
- 10) The RF SPD for the GPS equipment was improperly grounded back to the top of the equipment rack [Picutres\R56- \(67\).JPG](#). This RF SPD needs to be properly grounded directly back to the equipment ground bus system with a green jacketed AWG #6 grounding conductor.
- 11) The GPS receiver unit did not have a grounding conductor installed [Picutres\R56- \(68\).JPG](#). This unit needs to have a green jacketed, AWG #6, copper conductor attached to the

grounding screw on the back side of the unit and properly routed and bonded back to the equipment ground bus system.

- 12)** None of the UPS power supplies were grounded back to the equipment room's ground bus system [Picutres\R56- \(69\).JPG](#); [Picutres\R56- \(70\).JPG](#); [Picutres\R56- \(71\).JPG](#); [Picutres\R56- \(72\).JPG](#). These Best, FE Ferrups, power supplies are separately derived electrical systems and need to be properly bonded back to the equipment room's ground bus system. Each unit needs to have a green jacketed, AWG #6, copper conductor properly attached to the green grounding screw on the lower back side of the unit and properly routed and bonded back to the equipment ground bus system.
- 13)** The different cable groups did not maintain the proper cable group separation [Picutres\R56- \(73\).JPG](#); [Picutres\R56- \(33\).JPG](#); [Picutres\R56- \(56\).JPG](#); [Picutres\R56- \(87\).JPG](#). Each of the different cable groups (Grounds conductors, RF cables, AC power, DC power, Telco and Data) need to be arranged so as to provide the proper 2-inch cable group separation from the other cable groups. A cable group should only come in contact with a different type of cable group if they cross at a 90-degree angle and are properly secured so as to maintain the proper routing.
- 14)** The modems for the network servers did not have secondary SPDs installed on the phone circuits [Picutres\R56- \(75\).JPG](#); [Picutres\R56- \(76\).JPG](#); [Picutres\R56- \(77\).JPG](#); [Picutres\R56- \(78\).JPG](#). Secondary SPDs should be properly installed at either the equipment room's punch down block or next to the modem equipment that they are protecting. These secondary SPDs need to be properly bonded back to the room's common ground bus system with the proper routing and flow back towards the external grounding electrode system.
- 15)** The secondary SPD grounding conductors for the punch-down blocks were secured to the grounding bars with solder [Picutres\R56- \(74\).JPG](#). These grounding conductors need to be secured back to the SPD grounding bars with a tin plated UL486A listed lugs or clamps.
- 16)** The small copper bus bars for the secondary SPDs were not properly insulated from the wooden backboard [Picutres\R56- \(74\).JPG](#). The bus bars need to be installed with insulated mounting hardware.
- 17)** The network equipment did not have secondary SPDs installed on their network data cables [Picutres\R56- \(60\).JPG](#); [Picutres\R56- \(61\).JPG](#); [Picutres\R56- \(62\).JPG](#); [Picutres\R56- \(63\).JPG](#); [Picutres\R56- \(64\).JPG](#); [Picutres\R56- \(97\).JPG](#). Secondary SPDs should be installed on each of the network data cables. These secondary SPDs should be bonded back to the equipment room's ground bus system with the proper flow back towards the external grounding electrode system.
- 18)** Several of the other pieces of equipment in both sections of the EOC equipment room did not have secondary SPDs installed [Picutres\R56- \(80\).JPG](#); [Picutres\R56- \(98\).JPG](#); [Picutres\R56- \(56\).JPG](#). Each of the units should be look at to determine their importance to the system and if they are deemed critical to the operations, they should be considered for the proper installation of secondary SPDs. For more additional information on the proper installation of secondary SPDs refer to paragraph 9.5.2, beginning on page 9-38, of the R56 manual.
- 19)** Some of the raised floor cable openings were not properly protected [Picutres\R56- \(73\).JPG](#). Openings in raised flooring system need to be protected to prevent abrasions to cables and minimize debris beneath the floor.

- 20) In the front section of the EOC room, the cable entry conduits were not properly sealed to prevent moisture from entering the equipment room [Picutres\R56- \(79\).JPG](#). These conduits need to be properly sealed to prevent moisture from entering the equipment rooms. Any moisture build-up needs to be removed from the surrounding area and cables.
- 21) The floor panel over the conduit entry location was rusted [Picutres\R56- \(79\).JPG](#). This floor panel needs to have the rust removed and the surface needs to be treated with a primer or Zinc enriched paint to prevent additional rusting.
- 22) Several pieces of ancillary support equipment in the EOC equipment room and the main electrical room were not bonded back to the ground bus system [Picutres\R56- \(80\).JPG](#); [Picutres\R56- \(81\).JPG](#). Each of the non-electrically bonded metallic items should be bonded back to the ground bus system with a green jacketed AWG #6 grounding conductor.
- 23) The grounding conductors for the radio equipment racks were grounded with a UL486B listed aluminum lug and with a star washer between the lug and the rack's bonding surface [Picutres\R56- \(82\).JPG](#); [Picutres\R56- \(83\).JPG](#). The aluminum lugs should be replaced with tin plated UL486A listed lugs and secured with stainless steel securing hardware. The lug's bonding surface needs to be secured directly to the rack's grounding post without a star washer being inserted between the two bonding surfaces. The bonding surfaces of the brass grounding posts should be treated with Copper anti-oxidant compound before the bonding connections are re-established.
- 24) Excessive cable lengths were coiled up under the raised flooring system and above the drop ceiling areas [Picutres\R56- \(84\).JPG](#); [Picutres\R56- \(85\).JPG](#); [Picutres\R56- \(86\).JPG](#); [Picutres\R56- \(87\).JPG](#); [Picutres\R56- \(88\).JPG](#); [Picutres\R56- \(89\).JPG](#). The extra cable length needs to be removed or properly routed to eliminate coiled up bundles of cables.
- 25) The cables above the drop ceiling areas were not properly secured off of the ceilings [Picutres\R56- \(90\).JPG](#); [Picutres\R56- \(88\).JPG](#). These need to be separated into their proper cable groups and secured off the ceiling's support grid and the ceiling tiles.
- 26) Several individual system components in the radio equipment racks were not grounded back to the equipment ground bus system [Picutres\R56- \(91\).JPG](#); [Picutres\R56- \(92\).JPG](#); [Picutres\R56- \(93\).JPG](#); [Picutres\R56- \(94\).JPG](#); [Picutres\R56- \(95\).JPG](#). Each individual system component's housing in the equipment racks needs to be grounded back to an equipment ground bus extension with a jacketed AWG #6 grounding conductor, whenever possible. An example of this type of grounding configuration can be viewed in Figure 7-21, on page 7-39, of the R56 manual.
- 27) The cable runway system in the equipment room was not grounded [Picutres\R56- \(96\).JPG](#). Each section of the cable runway system needs to have a bonding jumper properly installed and the cable runway needs to be properly bonded back to the equipment ground bus conductor with a green jacketed, AWG #6, copper conductor.
- 28) The raised flooring system in the EOC equipment room was not properly grounded back to the equipment ground bus system [Picutres\R56- \(32\).JPG](#); [Picutres\R56- \(84\).JPG](#); [Picutres\R56- \(49\).JPG](#). The raised flooring systems in both sections of the room need to be properly bonded back to the equipment ground bus system with a properly installed ground bus system of its own. Refer to the ANSI T1.321-1995 Standard for additional information on this type of grounding.
- 29) The drop ceiling grid systems in the EOC equipment room and the main electrical room were not bonded back to the internal grounding system [Picutres\R56- \(88\).JPG](#);

[Picutres\R56- \(48\).JPG](#). Each of these areas should have a green jacketed AWG #6 grounding conductor properly secured to the room's drop ceiling grid system and the equipment ground bus system with a flow towards the external grounding electrode system.

Main Electrical and Telco Room

- 1) A Surge Protection Devices were not installed on the main electrical service for the building or on the distribution panelboard for the equipment room [Picutres\R56- \(25\).JPG](#); [Picutres\R56- \(26\).JPG](#). At a minimum, a Type-1A SAD/MOV SPD should be properly installed on the electrical distribution panelboard "B" in the main electrical room.
- 2) A SPD was not installed on the building's main electrical service disconnect or on the generator's Auto Transfer Switch (ATS) panel [Picutres\R56- \(27\).JPG](#). A Type-2 MOV SPD should be properly install on the main electrical disconnect panel or on the generator's ATS panel.
- 3) A Master Ground Bus bar (MGB) was not installed in the main electrical room and the ground rod for the electrical service had several daisy chain grounding connections established [Picutres\R56- \(39\).JPG](#). To resolve the daisy chain bonding issues and provide a convenient bonding location for all of the existing and needed grounding conductors in the electrical room, an adequately sized MGB should be properly installed at an appropriate bonding location between the existing ground rod and where the solid AWG #2 grounding electrode conductor exits the building [Picutres\R56- \(29\).JPG](#). The MGB should then be properly bonded back to the internal ground rod and the solid grounding electrode conductor which exits the building with AWG #2 copper conductors [Picutres\R56- \(28\).JPG](#); [Picutres\R56- \(30\).JPG](#). Each of the existing grounding conductors should be properly re-established back to the referenced MGB with their own separate securing hardware. If this is not within the customer's budget for rework, each of the existing grounding conductors and the internal ground rod should be properly secured back to the existing solid AWG #2 grounding electrode conductor with its own separate irreversible crimping connection. Each of the existing grounding conductors should be re-established back to the solid AWG #2 grounding electrode conductor so that it has the proper bending radius and flow back towards the external grounding electrode system. Before these grounding conductors are re-established, make sure they are properly routed back towards the referenced MGB or the external grounding electrode system with the necessary 2 inch cable group separation and the proper in 8 inch minimum bending radius with no less than a 90-degree angle.
- 4) The green jacketed AWG #2 ground bus conductor for the EOC equipment room was improperly routed in the PVC conduit with some ¼ Super Flex transmission lines, a CAT-5 cable, a 25 pair Telco cable and an eight pair control cable [Picutres\R56- \(32\).JPG](#); [Picutres\R56- \(33\).JPG](#); [Picutres\R56- \(34\).JPG](#); [Picutres\R56- \(35\).JPG](#); [Picutres\R56- \(36\).JPG](#); [Picutres\R56- \(37\).JPG](#); [Picutres\R56- \(38\).JPG](#). Some of these cable groups need to be re-routed outside the PVC conduit so they can maintain the required 2 inch cable group separation between the other cable groups. The green jacketed ground bus conductor and the RF transmission lines should be removed from the PVC conduit and re-routed between the EOC equipment room and the electrical room in the above the drop ceiling area

- [Picutres\R56- \(40\).JPG](#); [Picutres\R56- \(41\).JPG](#). These cables need to be routed between the rooms with the most direct routes possible. They need to be separated into their own cable groups and properly secured off the ceiling support grids and ceiling tiles.
- 5) The RG8 transmission line, which is routed with the two 25 pair Telco cables back to the EOC equipment room, needs to be removed from the PVC conduit and re-routed above the drop ceiling area along with the other transmission lines [Picutres\R56- \(20\).JPG](#); [Picutres\R56- \(42\).JPG](#); [Picutres\R56- \(43\).JPG](#).
 - 6) The black jacketed phone cable, which routes between Fire Department EOC room and the Police Department building, should only have its outer metallic shield bonded to one or the other grounding electrode system but not to both grounding electrode systems [Picutres\R56- \(44\).JPG](#). This should also apply to the main Telco cable entering the electrical room [Picutres\R56- \(45\).JPG](#); [Picutres\R56- \(44\).JPG](#). If this cable's outer metallic shield is bonded to two separate grounding electrode systems, it should be removed from one of the grounding electrode systems.
 - 7) The four non-terminated RG58 cables, which are coiled up on the floor of the electrical room were not properly protected with RF SPDs where they entered the room [Picutres\R56- \(46\).JPG](#). If the cables are going to be left in the building they need to be properly protected with RF SPDs and shorting stubs or 50 ohm loads within 24 inches of where they entry into the building.
 - 8) The conduit and piping systems above the electrical room were not properly bonded back to the internal grounding system with low impedance bonding connections [Picutres\R56- \(47\).JPG](#); [Picutres\R56- \(48\).JPG](#). AWG #6 copper conductors and tin plated UL486A Listed lugs or clamps with stainless steel securing hardware should be used to bond the conduits or their bracing brackets back to the referenced MGB or to a properly installed Internal Perimeter Ground Bus system.

The Outside Tower Area

- 1) The tower does not have a tower ground ring installed. Each tower leg's grounding electrode conductor has a different ground resistance reading that ranges from 2.3 ohms to 47.8 ohms [Picutres\R56- \(0\).JPG](#); [Picutres\R56- \(1\).JPG](#); [Picutres\R56- \(2\).JPG](#); [Picutres\R56- \(3\).JPG](#); [Picutres\R56- \(4\).JPG](#); [Picutres\R56- \(5\).JPG](#); [Picutres\R56- \(6\).JPG](#). A tower ground ring conductor needs to be properly established around the base of the tower and each of the tower's grounding electrode conductors needs to be properly bonded back to it in order to establish a common grounding electrode system for the site.
- 2) The majority of the transmission lines on the tower did not have ground kits installed at the bottom of their vertical cable runs [Picutres\R56- \(11\).JPG](#); [Picutres\R56- \(7\).JPG](#). A weather sealed transmission line ground kit needs to be installed on each cable's vertical cable run within 2 feet of where it transitions over to the building. There are currently seven ½ inch Heliac lines, three ¼ Surer Flex lines and one RG8 type cable being routed over to the building without the proper grounding. To provide a convenient bonding location for two larger groupings of transmission lines, a separate tinned plated Tower Ground Bus bar should be properly installed at the different transmission line transition points on the tower [Picutres\R56- \(11\).JPG](#).
- 3) Several of the transmission lines did not ground kits installed by their antenna mounting locations [Picutres\R56- \(8\).JPG](#); [Picutres\R56- \(9\).JPG](#). Each antenna transmission line

should have a weather sealed ground kit properly installed at its antenna mounting location and properly bonded back to the tower with a tin plated or stainless steel clamp and stainless steel securing hardware.

- 4) There are several transmission lines bonded back to the tower with braided grounding kits and daisy chained bonding connections [Picutres\R56- \(10\).JPG](#). All braided transmission line ground kits should be replaced with newer weather sealed transmission line ground kits to eliminate the possibility of Inter Modulation and to improve the bonding connection of the transmission line's outer shield. Each ground kit should be secured to the tower with its own separate securing hardware [Picutres\R56- \(22\).JPG](#).
- 5) None of the transmission lines had ground kits properly installed before they entered the building [Picutres\R56- \(11\).JPG](#); [Picutres\R56- \(13\).JPG](#); [Picutres\R56- \(14\).JPG](#); [Picutres\R56- \(12\).JPG](#); [Picutres\R56- \(15\).JPG](#). An External Ground Bus bar (EGB) should be properly installed at each of the transmission line cable entry windows to provide a convenient bonding location for the transmission line ground kits. There are currently two separate transmission line entry windows on the side of the building next to the tower and one transmission line entry window on the rooftop area of the building. A weather sealed transmission line ground kit needs to be properly installed on each of the antenna cable's outer shields within 24 inches of where they enter the building and bonded back the referenced EGBs or the building's common external grounding electrode system.
- 6) The metallic cable entry port for the lower transmission line entry port was not grounded back to a common external grounding electrode system [Picutres\R56- \(13\).JPG](#); [Picutres\R56- \(14\).JPG](#). The grounding conductor for the top metallic cable entry port was improperly routed back to the tower's grounding electrode system [Picutres\R56- \(13\).JPG](#). When the referenced EGBs are installed, each of these metallic entry ports needs to be properly bonded back to the referenced EGBs with a non-jacketed AWG #2, tinned, copper conductor.
- 7) The antenna support mast and the satellite support frame were not bonded back to a common external grounding electrode system [Picutres\R56- \(17\).JPG](#). Each of these metallic structures should be bonded back to the referenced rooftop EGB with a non-jacketed AWG #2, tinned, copper conductor.
- 8) None of the metallic pipes, vents or air conditioner units on the roof of the building have been bonded back to a common external grounding electrode system [Picutres\R56- \(16\).JPG](#); [Picutres\R56- \(17\).JPG](#). Each of the metallic items, within 10 feet of a grounded item, should be bonded back to the referenced rooftop EGB with a non-jacketed AWG #2, tinned, copper conductor.
- 9) The electrical transformer's housing by the tower was not grounded back to the tower's grounding electrode system [Picutres\R56- \(18\).JPG](#); [Picutres\R56- \(19\).JPG](#). The outer surface of the metallic housing should be properly bonded back to the recommended tower ground ring conductor.
- 10) The AC power conductors for the tower lights and the light sensor were not protected with Surge Protection Devices (SPDs) before they entered the building [Picutres\R56- \(10\).JPG](#). A SPD needs to be installed on the AC power conductors and on the light sensor conductors within 24 inches of their building's entry location and the SPDs need to be properly ground back to the recommended common grounding electrode system.

- 11) The metallic conduit for the tower lights was not properly grounded back to the tower's grounding electrode system [Picutres\R56- \(20\).JPG](#). The bottom of the metallic conduit needs to be properly grounded back to the tower's common external grounding electrode system.
- 12) The generator frame and the fencing in front of the generator compound were not grounded back to the tower's grounding electrode system [Picutres\R56- \(21\).JPG](#). These items should be properly bonded back to the tower's common grounding electrode system by following the guidelines in the R56 manual.
- 13) Some of the grounding conductors around the tower area were not properly routed back to the grounding electrode system with the correct bending radius [Picutres\R56- \(0\).JPG](#); [Picutres\R56- \(23\).JPG](#). All grounding conductors need to be routed with a direct flow towards the external grounding electrode system. If a bend is required in the grounding conductor, it needs to be installed with no less than an 8 inch radius bend and no less than a 90-degree bending angle.

Possible issues that could not be verified:

- 1) Unable to verify if the proper neutral to ground bonding connections were properly installed in the electrical distribution panelboards. This needs to be checked and verified by a qualified electrician [Picutres\R56- \(27\).JPG](#).

R56 Compliance Audit

Customer Name: City of Addison					Project Name: EOC-090203			
Project Manager: Walt Hedlund					Project #: N/A			
Inspector's Name: Ron Tatom					Audit Date: 09-02-2003			
Site Name: Addison Fire Department EOC Area								
	Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION	Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
1 GENERAL								
a.	A copy of the Project Manager's Compliance Sheet has been completed, certified and supplied for attachment to this audit.					X	N/A	N/A
b.	Project Manager's Compliance Sheet shows that all appropriate requirements have been met.					X	N/A	N/A
TOTALS FOR SECTION			0	0	0	0	2	
2 BUILDING DESIGN AND INSTALLATION								
a.	The ceiling height is sufficient to meet requirements for equipment installation.				X		N/A	N/A
b.	Cable runway system meets the proper installation requirements.				X		N/A	N/A
c.	The floor is sealed as required.				X		N/A	N/A
d.	Transmission line entry ports, holes or openings which penetrate the outer surface of the building have been properly sealed.					X	N/A	Paragraph 5.7
e.	Adequate lighting requirements have been met.				X		N/A	N/A
f.	Minimum required fire suppression equipment is properly installed.				X		N/A	N/A
g.	A first aid kit is available and meets requirements.					X	N/A	Paragraph 5.12.6.1
h.	Required personal protective safety items are available for servicing batteries which require such items.					X	N/A	N/A
i.	A telephone, microwave link, or cellular phone has been made available.				X		N/A	N/A
j.	Phone numbers of importance are posted at the site.					X	N/A	Paragraph 5.12.8
k.	The minimum required signage is posted at the site.					X	N/A	Paragraph 5.13
TOTALS FOR SECTION			0	0	6	4	1	

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
3 EXTERNAL GROUNDING									
a.	An External Ground Bus bar (EGB) of suitably sized material is properly installed at the transmission line entry point.				X		N/A		Paragraph 6.3.3
b.	The EGB grounding electrode conductor has been properly installed.					X	N/A	N/A	Paragraph 6.3.3
c.	When a tower ground bus bar (TGB) is used, it meets the proper installation and bonding requirements.					X	N/A	N/A	Paragraph 6.3.4
d.	Each transmission line outer shield is properly bonded to the tower or TGB at the transition of the vertical transmission line run with a weather sealed transmission line grounding kit.				X		N/A		Paragraph 6.4.6
e.	Each transmission line outer shield is properly bonded to the EGB with a weather sealed transmission line grounding kit.				X		N/A		Paragraph 6.4.6
f.	The tower is properly bonded with the required number grounding conductors.				X		N/A		Paragraph 6.4.5
g.	Ice bridges / cable supports have been properly bonded to the EGB.					X	N/A	N/A	Paragraph 6.4.3
h.	Each ice bridge / cable support post has been properly bonded to the grounding electrode system.					X	N/A	N/A	Paragraph 6.4.3
i.	Ice bridges / cable supports have been properly isolated from the tower.					X	N/A	N/A	Paragraph 6.4.3
j.	Guy wires are properly bonded and their grounding conductor maintains a continuous vertical drop to the grounding electrode.					X	N/A	N/A	Paragraph 6.4.5
k.	Fencing has been properly bonded to a ground system as required.				X		N/A		Paragraph 6.4.2
l.	Each fence gate is properly bonded to its supporting fence post as required.				X		N/A		Paragraph 6.4.2
m.	Gate supporting fence posts are properly bonded as required.				X		N/A		Paragraph 6.4.2
n.	Generator and support skids have been properly bonded as required.				X		N/A		Paragraphs 6.4.1 & 8.9.8.1
o.	Items listed below are properly bonded to the grounding electrode system as required.								Paragraph 6.4.1

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
o.1	Metallic entry ports				X		N/A		Paragraph 6.4.1
o.2	Cable conduits or raceways				X		N/A		Paragraph 6.4.1
o.3	Metallic piping (water, gas, electrical conduits, etc..)					X	N/A	N/A	Paragraph 6.4.1
o.4	Air conditioner units				X		N/A		Paragraph 6.4.1
o.5	Metal siding and/or roofing on buildings					X	N/A	N/A	Paragraph 6.4.1
o.6	Vent covers and grates				X		N/A		Paragraph 6.4.1
o.7	Metal fuel storage tanks (above or below ground)				X		N/A		Paragraph 6.4.1
o.8	Building skid or pier foundations					X	N/A	N/A	Paragraph 6.4.1
o.9	Anchors on prefabricated buildings					X	N/A	N/A	Paragraph 6.4.1
o.10	Metallic structures for antenna supports, light fixtures, etc.				X		N/A		Paragraph 6.4.1
o.11	Satellite dish supports				X		N/A		Paragraph 6.4.1
o.12	GPS antenna supports					X	N/A	N/A	Paragraph 6.4.1
o.13	Hand and safety rails					X	N/A	N/A	Paragraph 6.4.1
o.14	Ladders and safety cages					X	N/A	N/A	Paragraph 6.4.1
o.15	Security bars and window frames					X	N/A	N/A	Paragraph 6.4.1
o.16	Main electrical ground			X			N/A	N/A	Paragraph 6.4.1
o.17	Main telco ground			X			N/A	N/A	Paragraph 6.4.1
p.	Approved bonding techniques have been used for the connection of dissimilar metals.			X			N/A	N/A	Paragraph 6.5.2
q.	Approved methods have been used for conductor connection and termination.				X		N/A		Paragraph 6.5
r.	Bonding surfaces for lugs and clamps are free of paint and corrosion and a conductive anti-oxidant compound has been applied.				X		N/A		Paragraph 6.5
s.	All painted or galvanized bonding surfaces for exothermic welds were cleaned and painted to inhibit rusting.			X			N/A	N/A	Paragraph 6.5
t.	All grounding conductors have been routed towards the EGB, TGB or the grounding electrode system and the minimum bending radius has been observed.				X		N/A		Paragraph 6.4.4
u.	Grounding conductors are routed as straight as possible and protected from physical damage as required.			X			N/A	N/A	Paragraph 6.3.2

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
v.	Grounding conductors maintain the minimum required separation from other cable groups.				X		N/A		Paragraph 6.3.2.3
w.	Grounding conductors are securely fastened as required.			X			N/A	N/A	Paragraph 6.3.2.3
x.	Grounding conductors meet or exceed the conductor size requirements.			X			N/A	N/A	Paragraph 6.4.9
y.	Braided grounding conductors are not used anywhere in the external ground system.				X		N/A		Paragraph 6.4.2
TOTALS FOR SECTION		0	0	7	20	14			
4 INTERNAL GROUNDING									
a.	A properly sized Master Ground Bus Bar (MGB) is installed as required.				X		N/A		Paragraph 7.2.
b.	The MGB grounding electrode conductor has been properly bonded and routed towards the grounding electrode system.					X	N/A	N/A	Paragraph 7.2.
c.	All conductors connections to the MGB follow approved connection methods.					X	N/A	N/A	Paragraphs 7.4
d.	Where required a Sub System Ground Bus Bar (SSGB) has been properly installed.				X		N/A		Paragraph 7.2.2
e.	The SSGB has been bonded back to the MGB as required.					X	N/A	N/A	Paragraph 7.2.2
f.	All conductor connections to the SSGB follow the approved connection methods.					X	N/A	N/A	Paragraphs 7.4
g.	Where required an Internal Perimeter Ground Bus (IPGB) is properly installed.					X	N/A	N/A	Paragraph 7.3.2
h.	Only ancillary equipment is bonded to the IPGB.					X	N/A	N/A	Paragraph 7.3.5.3
i.	Each ancillary support apparatus is properly bonded to the IPGB, MGB, or SSGB.				X		N/A		Paragraph 7.3
j.	Items listed below are properly bonded to the MGB, SSGB, or IPGB by the approved connection methods.								Paragraph 7.3.2
j.1	Piping systems				X		N/A		Paragraph 7.3.2
j.2	Steel roof trusses					X	N/A	N/A	Paragraph 7.3.2
j.3	Exposed support beams or columns					X	N/A	N/A	Paragraph 7.3.2
j.4	Ceiling grids				X		N/A		Paragraph 7.3.2

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
j.5	Raised equipment floor support structure at the proper intervals.				X		N/A		Paragraph 7.3.2
j.6	Any exposed metallic building materials (metal siding)					X	N/A	N/A	Paragraph 7.3.2
k.	Surge Protection Device (SPD) metal housings are bonded to the MGB, SSGB or IPGB as required.					X	N/A	N/A	Paragraph 7.3.5.5
l.	Separately derived AC electrical systems are bonded to the MGB or SSGB as required.				X		N/A		Paragraph 8.3.2
m.	Primary telephone, control, and data network circuit SPDs are properly installed bonded to the MGB or SSGB as required.				X		N/A		Paragraph 7.3.5.6
n.	RF transmission line SPDs are bonded to the MGB or a separate equipment area SSGB as required.				X		N/A		Paragraph 7.3.5.5
o.	Cable runways are bonded to the MGB or SSGB as required.				X		N/A		Paragraph 7.3.3.4
p.	Each cable runway section is bonded to the adjoining section as required.				X		N/A		Paragraph 7.3.4
q.	Ground bus conductors and their extensions are sized as required.			X			N/A	N/A	Paragraph 7.3.1
r.	All ground bus conductors, ground bus extensions and equipment grounding conductors are routed towards the MGB or SSGB as required.				X		N/A		Paragraph 7.3.1.3
s.	Bonding connections to a ground bus or its extensions have been properly insulated as required.				X		N/A		Paragraph 7.3.1.3
t.	Cabinets have been properly bonded back to the MGB, SSGB or ground bus by approved methods.				X		N/A		Paragraph 7.2.2.4
u.	Racks have been properly bonded back to the MGB, SSGB or ground bus by approved methods.				X		N/A		Paragraph 7.2.2.4
v.	Any RGB located within a cabinet or rack is properly bonded back to the MGB, SSGB or ground bus as required.					X	N/A	N/A	Paragraph 7.2.3
w.	Individual system component chassis equipment is properly bonded as required.				X		N/A		Paragraph 7.2.3
x.	Secondary telephone, control, and data network circuit SPDs are properly installed and bonded back to MGB or SSGB as required.				X		N/A		Paragraph 7.3.5.6

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
y.	All required control center and dispatch equipment is properly bonded back to the MGB, SSGB, or ground bus conductor as required.				X		N/A		Paragraph 7.6
TOTALS FOR SECTION		0	0	1	18	11			
5 POWER SOURCES									
a.	Circuit breakers are labeled to identify the receptacle outlet they are protecting.			X			N/A	N/A	Paragraph 8.3.3
b.	Proper clearance requirements are being observed for power panels.				X		N/A		Paragraph 8.3.3
c.	Outlet boxes are permanently marked to identify their assigned circuit breakers and panels.			X			N/A	N/A	Paragraph 8.3.10
d.	Power receptacle outlets are mounted securely to the supporting structure.			X			N/A	N/A	Paragraph 8.3.9
e.	Adequate service receptacle outlets are provided for the technician.			X			N/A	N/A	Paragraph 8.3
f.	Each critical piece of equipment has a dedicated branch circuit and dedicated simplex receptacle.			X			N/A	N/A	Paragraph 8.3.10
g.	Power receptacles are installed by the equipment load as required.			X			N/A	N/A	Paragraph 8.3.10
h.	Extension cords including temporary outlet strips are not used in the final installation.				X		N/A		Paragraph 8.3.9
i.	Exterior receptacle outlets and circuits are GFCI protected as required.					X	N/A	N/A	Paragraph 8.3.5
j.	AC power receptacle outlets and strips are of the proper type and securely mounted off the floor.				X		N/A		Paragraph 8.4
k.	Appropriate clearance is being observed for safe servicing of UPS and battery banks.			X			N/A	N/A	Paragraph 8.6.2
l.	The neutral - ground bonding conductor has been properly installed in the main service disconnect as required.				X		N/A		Paragraph 8.3.7
m.	Equipment grounding conductors have been installed as required.			X			N/A	N/A	Paragraph 8.3.8
n.	Solar panels have been located away from objects that could damage or block sunlight to the panel.					X	N/A	N/A	Paragraph 8.7.2

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
o.	Proper mounting practices are being observed for solar panels or wind generators.					X	N/A	N/A	Paragraph 8.7.2
p.	Battery racks are bolted to the floor or wall.					X	N/A	N/A	Paragraph 8.8.8
q.	Battery conductors are enclosed in PVC, metallic conduit or raceways.					X	N/A	N/A	Paragraph 8.8.8
r.	A battery disconnect and suitable circuit protection device has been installed as required.					X	N/A	N/A	Paragraph 8.8.8
s.	When a standby power generator has been installed, it meets the proper installation requirements.			X			N/A	N/A	Paragraph 8.9.2
t.	Standby generators are located in areas only accessible by authorized personnel.			X			N/A	N/A	Paragraph 8.9.2
u.	Standby generators have an adequate area provided for servicing.			X			N/A	N/A	Paragraph 8.9.2
v.	Fuel storage tanks for standby generators are located within a secured area.			X			N/A	N/A	Paragraph 8.9.3
w.	A dedicated electrical circuit has been provided at the generator.			X			N/A	N/A	Paragraph 8.9.5
x.	A transfer switch of the proper ampacity rating has been installed to perform the switching between commercial power and standby generator power.			X			N/A	N/A	Paragraph 8.9.4
y.	A main service disconnect has been installed as required.			X			N/A	N/A	Paragraph 8.9.4
z.	Electrical panelboard ampacity ratings are properly coordinated.			X			N/A	N/A	Paragraph 8.9.4
TOTALS FOR SECTION		0	0	16	4	6			

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
6 TRANSIENT VOLTAGE SURGE SUPPRESSION									
a.	A Type 1 SAD/MOV surge protection device (SPD) is installed as required.				X		N/A		Paragraph 9.4.1
b.	A Type 2 MOV surge protection device (SPD) is installed as required.				X		N/A		Paragraph 9.4.1
c.	Primary SPDs for telephone circuits are installed as required.			X			N/A	N/A	Paragraph 9.5
d.	Secondary SPDs for telephone circuits are installed as required.				X		N/A		Paragraph 9.5
e.	Primary SPDs for control circuits are installed as required.				X		N/A		Paragraph 9.5
f.	Secondary SPDs for control circuits installed as required.				X		N/A		Paragraph 9.5
g.	Primary SPDs for data network circuits are installed as required.					X	N/A	N/A	Paragraph 9.5
h.	Secondary SPDs for data network circuits are installed as required.				X		N/A		Paragraph 9.5
i.	All RF transmission lines, including unused spares, have coaxial RF type SPDs properly installed as required.				X		N/A		Paragraph 9.6
j.	Where a tower top amplifier has been installed, the sample port and its control cables have SPDs installed as required.					X	N/A	N/A	Paragraph 9.6
k.	Tower lighting system AC power and data/alarm circuits have SPDs properly installed as required.				X		N/A		Paragraph 9.8
TOTALS FOR SECTION		0	0	1	8	2			
7 EQUIPMENT INSTALLATION									
a.	Equipment spacing and aisle widths conform to guidelines.				X		N/A		Paragraph 11.3
b.	Equipment is level and plumb.			X			N/A	N/A	Paragraph 11.4
c.	Equipment is square with surrounding equipment and walls.			X			N/A	N/A	Paragraph 11.4
d.	Where applicable, seismic installation practices have been observed.					X	N/A	N/A	Paragraphs 11.6
e.	Cabinets and racks are secured as required.				X		N/A		Paragraphs 11.6

R56 Compliance Audit

		Motorola Responsibility		Customer Responsibility			Motorola Failure	Customer Failure	
DESCRIPTION		Passed	Failed	Passed	Failed	N/A	Date Corrected	Date Corrected	Reference
f.	Cables and cable groups of different function maintain a minimum 5 cm (2 in.) separation as required.				X		N/A		Paragraph 11.8.1
g.	RF cables meet or exceed minimum bending radius requirements.			X			N/A	N/A	Paragraph 11.8.9
h.	Plenum-rated cables are installed as required.					X	N/A	N/A	Paragraph 11.8.2
i.	Proper cable lengths are used.				X		N/A		Paragraph 11.8.1
j.	Cables are properly secured at the required intervals.				X		N/A		Paragraph 11.8.1
k.	AC power conductors installed on cable runway systems meet installation requirements.			X			N/A	N/A	Paragraph 11.8.3
l.	Cables are properly identified with a standard, double-ended system.			X			N/A	N/A	Paragraph 11.8.13
m.	Distribution frame wiring conforms to the proper punch-down or wire-wrap techniques.			X			N/A	N/A	Paragraph 11.8.12
n.	CAT-5 cables maintain the proper separation from AC power cables.			X			N/A	N/A	Paragraph 11.8.7.4
o.	CAT-5 cables do not have any sharp bends.			X			N/A	N/A	Paragraph 11.8.7.4
p.	CAT-5 cables meet all other installation requirements.			X			N/A	N/A	Paragraph 11.8.7
q.	Cables installed below raised flooring systems are properly installed.				X		N/A		Paragraph 11.8.7
r.	Cables installed above suspended ceilings are properly installed.				X		N/A		Paragraph 11.8.2
s.	Electrostatic discharge practices are observed as required.				X		N/A		Paragraph 11.9
TOTALS FOR SECTION		0	0	9	8	2			
AUDIT TOTALS									
		MOTOROLA				CUSTOMER			
		Number of Passed	Number of Failed	Number of Passed	Number of Failed	Total N/A			
		0	0	40	62	38			

LETTER CONTRACT

Trico Tower Service, Inc.
4020 Creekmont
Houston, TX 77091
713-681-8299
Contact: John W. Hill

and

Town of Addison, Texas
P. O. Box 9010
Addison, TX 75001
972-450-2868
Contact: Hamid Khaleghipour
Information Technology Director

Trico Tower Service, Inc., a Texas Corporation with Corporate Office at 4020 Creekmont Houston, TX 77091, Federal Tax ID#76-0995412, agrees to supply and install materials and labor for the Town of Addison, Texas as outlined in attached Quote Q-5949-A to the Town at the Town's Emergency Operation Center (EOC) and Police Department. The terms and conditions set forth in the attached document entitled "Terms and Conditions to Letter Contract" are incorporated into and made a part of this Letter Agreement.

The Town of Addison, upon completion and satisfaction with and acceptance of work performed from Quote Q-5949-A, agrees to pay Trico Tower Service, Inc. within thirty (30) days of final invoice at a not to exceed price as outlined in Quote Q-5949-A.

Trico Tower Service, Inc.

Typed Name: _____

Date: _____

Town of Addison, Texas

Ron Whitehead, City Manager

Date: _____

TERMS AND CONDITIONS TO LETTER AGREEMENT

1. These Terms and Conditions ("Terms") apply to and are made a part of the Letter Agreement ("Agreement") between Trico Tower Service, Inc. ("Trico") and the Town of Addison, Texas (the "City") (Trico Quote Q-5949-A).

2. Trico will retain risk of loss and damage for all equipment, materials, and supplies ("materials") provided under this Agreement while the same is in its possession or control and during any periods of delivery and installation, and such risk of loss and damage will end upon final completion of the installation of the materials by Trico and acceptance thereof by the City. Trico will be responsible for any damage caused by its officers, employees, or subcontractors. Trico shall fully and finally complete the installation of the materials within 30 days following the Effective Date.

3. If any part of the work to be performed by Trico or any of the materials to be installed hereunder does not meet and satisfy all of the specifications and the terms and conditions of this Agreement to the City's satisfaction, Trico will correct the deficiencies and any acceptance testing will be repeated to the extent necessary to demonstrate that the deficiencies have been corrected and approved by City.

4. Any invoice submitted to the City shall include true and correct copies of any and all receipts, invoices, and other information in support of, and such additional documents and information as the City may request in connection with, the invoice and the materials.

5. (a) Trico warrants and represents that its services and work will be provided in a professional, good and workmanlike manner, consistent with the commercially accepted best practices and standards that are in use in Trico's line of business as of the time such services and work are provided.

(b) Trico warrants its service and work as described in this Agreement for a period of one (1) year from and after the date of the City's acceptance. If, during such time period, any of Trico's work is found to be not in accordance with the requirements of this Agreement or is otherwise defective or improperly installed or constructed, Trico shall correct it promptly after receipt of written notice from the City to do so.

(c) Trico represents and warrants that it has clear title to and the right to sell (or will have clear title to and the right to sell prior to and at the time of the sale of the items to the City) the materials and other items to be delivered and installed by Trico hereunder.

(d) In connection with this Agreement and prior to the Final Acceptance Date, Trico shall, with respect to the equipment, materials, and products described in this Agreement, assign to the City all benefits of the manufacturer's warranty on such equipment, materials, and products provided to the City, or any other guarantee which may apply to any such products, if Trico has such benefits, warranty or guarantee. In addition, Trico represents that: (i) any third party products shall be of satisfactory quality and fit for the purpose(s)

held out by Trico; and (ii) such third party products shall comply with any specifications, drawings, samples or description provided by Trico and its subcontractors.

(e) Trico warrants that all work performed under this Agreement and any money to be paid to Trico hereunder shall be free and clear of liens, claims, security interests or encumbrances in favor of Trico, its subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to this Agreement. Trico agrees to defend, indemnify and hold harmless the Indemnified Persons from and against, at Trico's sole cost and expense, against any and all actions, lawsuits, or proceedings brought against the Indemnified Persons (or any of them) as a result of liens, claims, security interests, or encumbrances filed or sought to be filed against the work or any money to be paid to Trico hereunder, the site of any of such work, or any other property of the City or any third party, and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings. Trico shall, in connection with its work hereunder, keep the premises, improvements, and property (whether real or personal) of the City and any third party free and clear of all liens.

6. Prior to execution of this Agreement, Trico evaluated and satisfied itself as to the conditions and limitations under which their work is to be performed, including, without limitation, the location, condition, layout and nature of the site and surrounding areas. City assumes no responsibility or liability for the physical condition or safety of any site or any improvements located on any site. Trico shall be solely responsible for providing a safe place for the performance of its work.

7. Trico represents and warrants that it is and shall be during all time of this Agreement duly organized, validly existing, and authorized to do business and in good standing in all applicable governmental jurisdictions (including, without limitation, the State of Texas) in which the failure to so qualify would have a materially adverse effect on Trico's ability to perform its obligations hereunder.

8. Trico, at its own expense, shall purchase, maintain and keep in force such insurance as described and in the minimum amounts set forth below:

- (a) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include, without limitation, contractual liability and products/completed operations (\$1,000,000 products/completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after the work has been completed.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

With reference to the foregoing insurance requirements, Trico shall specifically endorse applicable insurance policies as follows:

1. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
2. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least thirty (30) days notice prior to cancellation or non-renewal of the insurance.
3. All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
4. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
5. Trico may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
6. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall be satisfactory to the City, shall be furnished to the City upon execution of this Agreement, and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth a 30 day notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Trico shall furnish the Town of Addison with certified copies of all insurance policies.

9. Trico shall defend (with counsel acceptable to City), indemnify and hold harmless the City, its officials, officers, employees, and agents (together, "Indemnified Persons") against and from any and all losses, liability, lawsuits, damages, claims, demands, costs, fees and expenses (including, without limitation, reasonable attorneys' fees), arising from,

out of, or in connection with (i) any act or omission of Trico or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, under or in connection with this Agreement, (ii) any breach of this Agreement by Trico, and (iii) any assertion under worker's compensation or similar laws made by persons furnished by the Trico under or in connection with this Agreement. The provisions of this subparagraph B.2. shall survive the termination or expiration of this Agreement.

10. Trico shall furnish to the City bonds covering the payment of obligations arising hereunder (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with this Contract) prior to beginning any work hereunder. Such bond shall be in a form and content, and issued by a surety company, satisfactory to Owner. Such bond shall be in an amount equal to the not to exceed price as outlined in Quote Q-5949-A and all subsequent increases. The bond shall include a rider which (i) provides that the surety agrees that it consents to and waives notice of any addition, alteration, omission, change, extension of time, or other modification to this Agreement; (ii) that any addition, alteration, omission, change, extension of time, or other modification of this Agreement, or a forbearance of either the City or Trico to the other, shall not release the surety of its obligations hereunder, and notice to the surety of any such matters is waived.

11. A. In the performance of its work hereunder, Trico shall take precautions for safety of, and shall provide protection to prevent damage, injury, harm or loss to: (i) employees on the work or other persons who may be affected thereby; (ii) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Trico or Trico's subcontractors; and (iii) other property at any work site adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

B. Trico shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

C. Trico shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, harm or loss.

D. Trico shall erect and maintain, as required by existing conditions and performance of this Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

12. If Trico fails to correct any of its work which is not in accordance with the requirements of this Agreement or fails to carry out or perform its work under this Agreement in accordance with this Agreement, the City, by written notice, may order Trico to stop the work hereunder, or any portion thereof, until the cause for such order has been eliminated.

13. Time is of the essence of this Agreement, the completion of the project described herein being essential to the safety, health and welfare of the public.

14. City, by written notice, may terminate this Agreement and/or stop the work of Trico, in whole or in part, for any reason. Upon receipt of such notice, Trico will stop work as specified in the notice in an orderly and expeditious manner, place no further subcontracts or orders in connection with this Agreement (except as necessary to complete the continuing portion of the Agreement, if any), terminate all subcontracts to the extent they relate to terminated work and, with the approval of City, settle all outstanding liabilities arising thereunder, deliver to City all equipment, materials, and products and all applicable interests in and rights thereto, all completed work and supplies produced or acquired for the work terminated, and complete performance of any work not terminated. City will pay Trico for all equipment, materials, and products delivered and properly installed and all of Trico's services properly performed and provided through the effective date of termination. If the City's termination of the work is for Trico's failure to perform and provision of this Agreement, City may, without prejudice to any other rights or remedies of the City and after giving Trico and Trico's surety, if any, at least five (5) days' written notice, may, terminate employment of Trico and may, subject to any prior rights of the surety, (a) take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon, and (b) finish the work by whatever reasonable method the City may deem expedient (and the cost to the City to finish the work shall be deducted from the price as outlined in Quote Q-5949-A).

15. In as much as this Agreement is intended to secure the specialized services of Trico, Trico has no authority or power to and shall not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void and shall be cause for the City to immediately terminate this Agreement.

16. In the event of any suit or action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

17. Trico shall comply with and give notices required by all laws, ordinances, rules and regulations and lawful orders and all other requirements of public authorities bearing on its performance of and under this Agreement.

18. This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. Trico shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in

writing and signed by both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

19. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. All obligations arising prior to the termination of this Agreement allocating responsibility or liability of or between City and Trico shall survive completion of the services hereunder and termination or expiration of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies, and said rights and remedies are given in addition to any other rights the Parties may have by law statute, ordinance, or otherwise.

20. Trico shall, during the entire term of the Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise relationship, or to allow the City to exercise discretion or control over the professional manner in which Trico performs the services which are the subject matter of the Agreement; provided always however that the services to be provided by Trico shall be provided in a manner consistent with all applicable standards and regulations governing such services. In no event shall the City have control over, charge of, or responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the work of Trico hereunder, notwithstanding any of the rights and authority of the City set forth in this Agreement.

21. All notices provided for or permitted under this Agreement shall be in writing and shall be (a) delivered personally; (b) sent by commercial overnight courier with written verification of receipt; or (c) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the person to be notified, at the address for such person set forth above or at such other address as is indicated in writing by such person. All notices shall be deemed effective upon receipt.

22. Each Party hereby represents that as of the date of execution of this Agreement that it has full power and authority to enter into and to perform this Agreement, and that the undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of each of the respective parties.

23. This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

24. As set forth above, payment to Trico for Trico's work and services hereunder shall be made in a lump sum payment and not until the final completion of, and the City's satisfaction with and acceptance of, such work and services. In addition, payment shall not be due to Trico until such time as Trico submits to the satisfaction of the City (1) an affidavit (duly sworn to by an authorized officer of Trico and in a form satisfactory to the City) that payrolls, bills or obligations for materials, services, and equipment, and any and all other indebtedness connected with the work and services for which the City or the City's property might be responsible or encumbered, have been paid or otherwise satisfied, (2) a certificate (in a form satisfactory to City) evidencing that insurance required by this Agreement to remain in force and effect after payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the City, and a written statement that Trico knows of no substantial reason that the insurance will not be renewable to cover the period required by this Agreement, (3) if required by the City, other data establishing payment or satisfaction of obligations, such as, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by the City, and (4) such other information or documents as City may require.

Council Agenda Item: #R13

SUMMARY:

We are recommending that the Council approve a design proposal totaling \$26,175.00 for landscape architecture design services for the Parkview in Addison Circle Park. The attached proposal outlines the scope of services and fee schedule.

FINANCIAL IMPACT:

Budgeted Amount: **\$300,000.00 - Design and Construction Budget**

Cost: **\$26,175.00**

Funding for the park is located in the Street Capital Projects fund. Several years ago, the General fund transferred surplus fund balance to the Street Capital Projects fund with the expectation that it would be used as the Town's contribution for streets in Addison Circle. However, with the issuance of bonds for street improvements (e.g. Spectrum), these funds can now be applied to the Town's park obligations in Addison Circle. The funds, totaling \$707,767 will be transferred to the Parks Capital Project fund, which had been closed in 2002. The transfer will be recognized as a mid-year budget amendment.

The design fee is 9.5 percent of the \$273,825.00 construction budget. Based on past experience, staff feels that the fee is in line, taking into account the scope of services and time required to do the work. Staff checked what other surrounding cities are paying for design fees, and they generally range from 8.5 percent on larger projects from \$1 million and up, to 12 or 13 percent.

BACKGROUND:

Staff is working with Cityhomes to schedule the construction of this park, which is slated to begin this summer. Once Cityhomes completes their first phase of site paving, the open access will make it an ideal time to complete construction of the park.

As outlined in the design proposal, the scope of work includes design of the streetscape around the park perimeter; some type of shade structure for community gatherings, pathway paving; lighting; grading; landscape planting and irrigation.

A design committee consisting of town staff and Cityhomes representatives will provide input to Talley Associates during the schematic design phase. A schematic design will be presented to the Council for review and approval afterwards.

As a point of reference, the following summarizes the per foot construction cost for various parks:

Esplanade Park	\$9.53/sq. ft.	1.43 acres
Bosque Park	\$9.13/sq. ft.	1 acre
Park View At Addison Circle Park	\$8.98/sq. ft.	.7 acres

RECOMMENDATION:

Staff is recommending Talley Associates based on prior experience with them on the Water Tower East Entry Way Project and the Conference and Theatre Centre Parking Lot project. Their plans are very detailed, and they do not leave anything to question by the contractor, which equates to more concise bids and fewer change orders.

Attachments – Talley Associates Design Proposal
Parkview at Addison Circle Site Plan

27 February 2004

Mr. Slade Strickland
Director, Parks and Recreation
Town of Addison
PO Box 9010
Addison, Texas 75001-9010

Re: Proposal/Agreement for Landscape Architectural Services
Park View at Addison Place Park
TA 3060

Dear Slade:

Talley Associates, Inc. ("Talley") is pleased to submit to the Town of Addison ("Client") this proposal for landscape architectural services for the Park View at Addison Place Park ("Project") located near Quorum Drive, Spectrum Drive and Morris Avenue in Addison, Texas, and being approximately 0.7 acres in size ("Site"). Upon acceptance of the terms and conditions provided herein by Client (as evidenced by the execution of this document by Client in the space indicated below), this document shall become the fully binding and exclusive agreement between the parties with respect to the Project (this document, whether accepted or not, shall be referred to herein as this "Agreement"). Based on our understanding of the Project, Talley proposes to provide Client with the following schematic design, construction documentation and/or construction administration services (collectively "Services") with respect to the Project:

A. BASIC SERVICES

- 1. Schematic Design.** Based on Client input, Talley will prepare a schematic design package for the Site, illustrating the following:
 - a. Schematic design of shade structure;
 - b. Schematic design of streetscape;
 - c. Schematic design of paving and lighting;
 - d. Grading schematic; and
 - e. Schematic landscape planting design.

The schematic design plan will be drawn at a scale sufficient to explain design intent. Drawings will include a color rendered site plan and any necessary cross sections and enlarged plans to explain the design intent. Talley will prepare a statement of probable cost, based upon the schematic design package.

- 2. Construction Documentation.** Based on the Client approved schematic design package, Talley will prepare a set of contract documents sufficient to describe the work necessary for construction (the "Contract Documents"). The following documents will be prepared:
 - a. Layout and materials plan (Dimensional control provided by civil engineer for street edge/vehicular circulation, dimensional control for Site design features by Talley);
 - b. Grading plan;
 - c. Planting plan;
 - d. Site lighting including electrical engineering;

- e. Irrigation plan;
- f. Details and sections at appropriate scales necessary to convey the sizes, appearances, finishes, and colors of pavements, walls, steps, planters, Site furnishings, Site structures, lighting and irrigation equipment; and
- g. Complete Technical Specifications (CSI format) describing all elements of the proposed work. General and supplementary general conditions of the construction contract and the necessary contract forms will be provided by the Client.

3. Bidding and Negotiation/Construction Administration. Upon the completion of the other Basic Services provided above, Talley will assist Client in the retention of qualified personnel to provide the services required to complete the Project, as follows:

- a. Preparation of any addenda to the Contract Documents as may be required during the bidding or negotiating process;
- b. Evaluation and assessment of bids or negotiated proposals;
- c. Propose and/or evaluate value engineering and substitutions with respect to cost implications and effect on quality and/or scope of the work;
- d. Attend one pre-construction meeting and assist the Client in conducting this meeting;
- e. Review shop drawings and contractor submittals as they relate to the overall site development and general conformance of the design as set forth by the contract documents;
- f. Assist in the review of substitutions, change orders, contractor schedule reports and pay requests;
- g. Make one trip with the selected contractor for the selection and tagging of plant material;
- h. Visit the Site to observe and report on the progress and quality of work and to determine, in general, if the work is proceeding in accordance with the contract documents. Site visits are limited to three Site visits plus one punch list visit.
- i. Provide a written report of each Site visit, including a summary of any corrective work to be performed;
- j. Assist the contractor in the preparation of a list of items requiring corrective action prior to the contractor's final pay request and Client's acceptance; and
- k. Determine and certify substantial completion.

B. ADDITIONAL SERVICES. The following additional services related to the Project may be provided if mutually agreed upon by the parties, and if so provided shall become part of the Services:

- 1. Preparation of environmental graphics package;
- 2. Survey or base map preparation of the Site;
- 3. Any rezoning related services;
- 4. Services for special Site features or amenity, i.e. fountain mechanical;
- 5. Professional model building services;
- 6. Additional travel beyond that provided in this Agreement;
- 7. Civil or mechanical engineering services; storm water calculations, subsurface drainage and utility layouts as they relate to any aspect of the Project;
- 8. Illustrative renderings beyond those described in the Basic Services listed in this Agreement;
- 9. Construction document revisions due to Client requested changes once construction document level design has commenced;
- 10. Construction administration services beyond those described in Basic Services;

11. Special investigations involving detailed consideration of operations, maintenance, and overhead expenses; special feasibility studies, appraisals and valuations; and material audits or inventories required by Client;
12. Environmental impact studies or assessments or audits and/or services in connection with Regulatory Agency Permitting; and
13. Preparation of maintenance manuals.

C. EXCLUDED SERVICES. Unless otherwise agreed to in writing, the following services will not be provided by Talley, and shall not be considered part of the Services:

1. Project management;
2. Processing of payment requests submitted by others;
3. Evaluation of subsurface conditions;
4. Evaluation of soil issues (including suitability for plant material, soil content, level of compaction);
5. Lot line and utilities locations;
6. Preparation of bidding requirements;
7. Preparation of existing plant inventory; and
8. Subsurface drainage design.

D. CLIENT'S RESPONSIBILITIES.

1. Client agrees to provide Talley with all information, surveys, reports, and professional recommendations requested by Talley in providing the Services, and acknowledges that Talley may reasonably rely on the accuracy and completeness of any items so provided.
2. Talley is not responsible for any necessary permits from authorities having jurisdiction over the Project and Site. Talley will assist permitting process by completing and submitting appropriate paperwork and forms to Client or governing authorities. Talley's assistance, however, shall not include attendance at more than one meeting with such governing authorities or creating additional or special documentation required by such authorities.
3. Client agrees to comply with the responsibilities provided in this section in a timely manner so as not to delay the orderly and sequential progress of the Services.

E. ESTIMATED SCHEDULE AND PROJECT BUDGET.

1. Talley shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.
2. As of the date of this Agreement, Client's Project construction budget is approximately \$270,000. Client agrees to promptly notify Talley if Client's schedule or budget changes. Client acknowledges that significant changes to the Project schedule, budget or the scope of the Project may require Additional Services from Talley.

F. REPRESENTATION; STANDARD OF CARE; LIABILITY OF PARTIES; PERFORMANCE OF WORK

1. Talley represents and warrants that it is authorized to practice landscape architecture in the State of Texas and that any necessary licenses, permits or other authorization to practice landscape architecture and to provide the services set forth herein have been heretofore acquired as required by law, rule or regulation.
2. Notwithstanding anything herein to the contrary, Talley and Client agree and acknowledge that Client is entering into this Agreement in reliance on Talley's professional abilities with respect to performing the services set forth herein. Talley agrees to use its professional skill, judgment and abilities in the performance of its services hereunder, and shall render services under this Agreement and in connection with the Project in accordance with the professional standards of landscape architecture prevailing in the Dallas-Fort Worth metroplex area and shall use the skill and care commensurate with the requirements of the landscape architecture profession. Talley shall perform its services in accordance with all laws, regulations, and rules in accordance with the standard of care set forth herein.
3. Without in any way limiting the foregoing or any other provision of this Agreement, Talley shall be liable to Client for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by or resulting from any negligent, grossly negligent, or intentionally wrongful errors, acts or omissions of Talley, Talley directors, partners, officers, employees, agents, contractors, subcontractors, or any person or entity for whom Talley is legally liable, in the provision of its services under this Agreement, and for other breaches by Talley to the extent Talley was negligent, grossly negligent, or intentionally wrongful in its performance of professional services under this Agreement.
4. Talley shall perform all work hereunder in a manner satisfactory and acceptable to Client in accordance with the standard of care set forth herein.

G. COMPENSATION AND PAYMENTS. Client agrees to pay Talley as follows:

1. Basic Services:

Task	Est. Hrs. Land. Arch.	Est. Hrs. Staff/Drafter	Fee
1.0 Schematic Design	24	20	\$ 4,675
2.0 Construction Documentation	40	140	\$16,500
3.0 Bid. & Neg./Construct. Admin.	32	13	\$ 5,000
Total	96	176	\$26,175

2. **Additional Services:** On an hourly basis in accordance with the Hourly Rate Schedule below, not to exceed \$3,000.

Hourly Rate Schedule	
Principal	\$ 150.00
Associate Principal	\$ 125.00
Associate	\$ 90.00
Professional Staff - Level Three	\$ 75.00
Professional Staff - Level Two	\$ 70.00
Professional Staff - Level One	\$ 65.00
Administrative Support Staff	\$ 45.00

3. **Reimbursable Expenses:** All reasonable expenses incurred by Talley in providing the Services, including, but not limited to, reproduction, postage, document handling, long distance and facsimile charges, and authorized travel are included in the Basic Services fee, including 5 sets of the Contract Documents. Client requested renderings and models other than described in Basic Services shall be in addition to the Basic Services fee.
4. **Billing:** Talley shall submit to Client an invoice or billing statement for Basic and Additional Services, as well as Reimbursable Expenses, in form and substance satisfactory to Client, once a month. All invoices or billing statements shall include a statement of services rendered and the amount owed in connection therewith and the sum of all prior payments. Payment for work properly performed is due within 10 business days from Client's receipt of invoice. Payment not made within 60 days from the end of the calendar month to which the invoice applies will bear interest at the rate of 1.5% per month until paid.

H. TERMINATION.

1. If the Project is suspended for more than 30 consecutive days, for reasons other than the fault of Talley, Talley shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Talley's compensation shall be equitably adjusted by an amount agreed to by the parties to provide for expenses incurred in the interruption and resumption of Talley's services; provided, however, that in no event shall total compensation under this Agreement exceed \$29,175.00. Talley shall not be entitled to any compensation for any services or work not actually performed as a result of any abandonment or suspension of work by the Client.
2. If the Project is abandoned by the Client because of the abandonment of the Project for more than 90 consecutive days, Talley may terminate this Agreement by giving written notice.
3. This Agreement may be terminated by Client upon not less than fourteen days' written notice to Talley. This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
4. In the event of termination of this Agreement, no amount shall be due Talley for lost or anticipated profits. If Client has compensated Talley for work not yet performed, Talley shall promptly return such compensation to Client in the event of termination. In the event of termination and upon payment to Talley for work

properly performed by Talley to the date of termination, Talley shall deliver to the Client all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Talley in connection with this Agreement and the Project.

- I. DISPUTE RESOLUTION.** Client and Talley agree to mediate claims or disputes arising out of or relating to this Agreement as a condition precedent to litigation. The mediation shall be nonbinding and shall be conducted by a mediation service mutually acceptable to both parties to be chosen within thirty (30) days after written notice by the party seeking mediation. A demand for mediation shall be made within a reasonable time after a claim or dispute arises and the parties agree to participate in mediation in good faith. Mediation fees shall be shared equally. In no event shall any demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statutes of limitation.

J. USE AND OWNERSHIP OF DOCUMENTS; REPRESENTATION REGARDING DOCUMENTS; CLIENT'S APPROVAL OF DOCUMENTS.

1. Upon payment to Talley for work properly performed, drawings, designs, plans, specifications, reports, information, and other documents or materials (together, "Drawings") prepared by Talley in connection herewith belong to, and remain the property of, the Client for its exclusive reuse at any time without further compensation and without any restrictions, and all intellectual property rights in connection with the same (whether copyright or otherwise) are hereby assigned by Talley to Client. Talley may make and retain reproducible copies of the same for Talley's own record and use. Upon such payment to Talley, Client shall be furnished with such Drawings

Client acknowledges that the Drawings are subject to professional interpretations relating to changed circumstances, including the passage of time. Such Drawings are not intended or represented to be suitable for additions, extensions, alterations, or completion of the Project by another landscape architect or use on any other project. Any use without written verification or adaptation for the specific purpose intended shall be at the user's sole risk and without liability or legal exposure to Talley. The Client agrees to waive all claims against Talley and, to the extent permitted by law and without waiving any immunity to which Client is entitled and subject to the limitations of the Texas Tort Claims Act, to the extent that it applies to the Client, indemnify and hold Talley harmless from any liability, claim, injury or loss arising from the negligent use by Client of the Drawings.

Notwithstanding Client's approval of any of the Drawings, Talley warrants and represents that the same, as the same may be amended or supplemented by Talley, per the standard of care, shall, to the best of Talley's knowledge, information and belief as landscape architect performing the practice of landscape architecture in accordance with the standards, duties, and obligations set forth herein, be sufficient and adequate for construction of the Project, shall be free from material error, and shall be satisfactory to the Client. In accordance with the standard of care, Talley agrees that if it shall recommend unsuitable materials in connection with the Project and this Agreement or if the design of the Project should be defective in any way, Talley will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Talley's

recommendation of unsuitable materials or defective design. Approval by the Client of any of Talley's Drawings or work pursuant to this Agreement shall not constitute nor be deemed a release of the responsibility and liability of Talley, its employees, subcontractors, agents and consultants for the accuracy and competency of the same, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the Client for any defect, error or omission in such Drawings or work, it being understood that the Client at all times is ultimately relying on Talley's skill and knowledge in preparing the Drawings.

2. Client hereby grants Talley the right to include descriptions of the Project in its promotional and professional materials.

K. GOVERNING LAW. This Agreement is governed by the law of the state of Texas. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas (state court) or in the northern district of Texas (federal court). The parties agree that the laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Agreement, and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement.

L. ENTIRE AGREEMENT AND SEVERABILITY.

1. This Agreement is the entire and integrated agreement between Client and Talley and supersedes all prior negotiations, statements or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and Talley.
2. In the event that any term or provision of this Agreement is found to be void, invalid or unenforceable for any reason, that term or provision shall be deemed to be stricken from this Agreement, and the balance of this Agreement shall survive and remain enforceable.

M. ASSIGNMENT. Neither party can assign this Agreement without the other party's written permission.

N. LIMITED CONSTRUCTION PHASE SERVICES.

1. Notwithstanding any other term in this Agreement, Talley shall not control or be responsible for another's means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs, or for another's failure to complete the work in accordance with the plans and specifications applicable to any portion of the Project.
2. Construction-phase services will be provided to determine the general progress of the work, but will not include supervision of the contractors, or of their means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs. Talley will provide a written report of each Site visit, including a summary of any corrective work to be performed.

3. If construction-phase payment certification services are included in this Agreement, such certifications for payment shall be a representation to the Client that, to the best of Talley's knowledge, information and belief, the work has progressed to approximately the point indicated. Such certification shall be subject to any noted qualifications by Talley and shall not be a representation that Talley has supervised the work, reviewed means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs of the contractors, or that Talley has reviewed how or for what purpose the contractor has used or intends to use the contract funds.
- O. MAINTENANCE.** Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of proper maintenance in areas such as, but not limited to, irrigation system maintenance, lighting maintenance, mowing and pruning, may result in damage to property or persons. Client further acknowledges that Talley is not responsible for the results of any lack of or improper maintenance of the Project.
- P. NO THIRD PARTY BENEFICIARIES.** Nothing in this Agreement is intended to create a contractual relationship for the benefit of any third party. There are no intended beneficiaries of this Agreement except Talley and Client.
- Q. INSURANCE.** In connection with this Agreement, Talley shall provide and maintain in full force and effect during the term of this Agreement:
1. Workers' compensation and employer's liability insurance for the protection of Talley's employees, to the extent required by the law of the State of Texas;
 2. Commercial general liability insurance with limits not less than One Million and No/100 Dollars (\$1,000,000.00) each occurrence combined single limit bodily injury and property damage, including contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement), personal injury, broad form property damage, products and completed operations coverage (and if such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Services under this Agreement);
 3. Comprehensive automobile liability insurance with limits not less than One Million and No/100 Dollars (\$1,000,000.00) each occurrence combined single limit bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable; and
 4. Professional Liability Insurance to protect from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than One Million and No/100 Dollars (\$1,000,000.00) per claim and aggregate. This coverage must be maintained for at least two (2) years after the project contemplated herein is completed. If coverage is written on a claims-made basis, the retroactive date must not be later than the inception date of this Agreement.

All such policies of insurance shall (a) be issued by insurance companies reasonably acceptable to Client, (b) except for professional liability insurance, shall name (by

endorsement) the Town of Addison, Texas, its officials, officers, employees and agents as an additional insured or loss payee, as the case may be, (c) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted hereunder, (d) except for professional liability insurance, shall contain a waiver of subrogation endorsement in favor of the Town of Addison and (e) provide for at least thirty (30) days written notice to the Town of Addison, Texas prior to cancellation, non-renewal or material modification which affects this Agreement. Certificates of insurance (together with the declaration page of such policies, along with the endorsement naming the Town of Addison, Texas as an additional insured or loss payee, as the case may be,) satisfactory to Client, evidencing all coverage above, shall be promptly delivered to Client and updated as may be appropriate, with complete copies of such policies furnished to the Client upon request. The Client reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by the Client.

- R. INDEMNIFICATION.** In connection with this Agreement, Talley agrees to and shall indemnify the Town of Addison, Texas, its officials, officers, agents and employees (together, for purposes of this subparagraph, the "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all claims, actions, causes of action, demands, losses, harm, damages, liability, expenses, lawsuits, judgments, costs, and fees asserted by any person or entity on account of or for any injury to or the death of any person, or any damage to or destruction of any property, or any other harm for which damages or any other form of recovery is sought (whether at law or in equity), to the extent caused by the negligent, grossly negligent, or intentionally wrongful acts, errors, or omissions of Talley, its officers, employees, agents, engineers, consultants, or any person or entity for whom Talley is legally liable, under, in connection with, or in the performance of, this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.
- S. SURVIVABILITY OF RIGHTS AND REMEDIES.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Talley and Client shall survive the completion of the services hereunder. Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this Agreement shall survive the cancellation, expiration or termination of this Agreement.
- T. NOTICE.** All payments, notices, demands, or requests from one party to the other shall be personally delivered or sent by United States mail to the addresses stated in this Paragraph:

To Talley:

Talley Associates, Inc.
1925 San Jacinto Suite 400
Dallas, Texas, 75201
Attention: Kevin G Bernauer ASLA AICP

To Client:

Town of Addison, Texas
5300 Belt Line Road
P.O. Box 9010
Dallas, Texas 75240-7606
Attention: City Manager

All notice or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee (i) if by hand delivery, at the time of delivery, or (ii) if mailed, seventy-two (72) hours after the deposit of same in any United States mail post office box. The addresses and addressees for the purpose hereof may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

- U. AUTHORITY.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

We appreciate the opportunity to collaborate on the Project, and look forward to working with you. Should you have any questions with respect to this Agreement, please feel free to contact me.

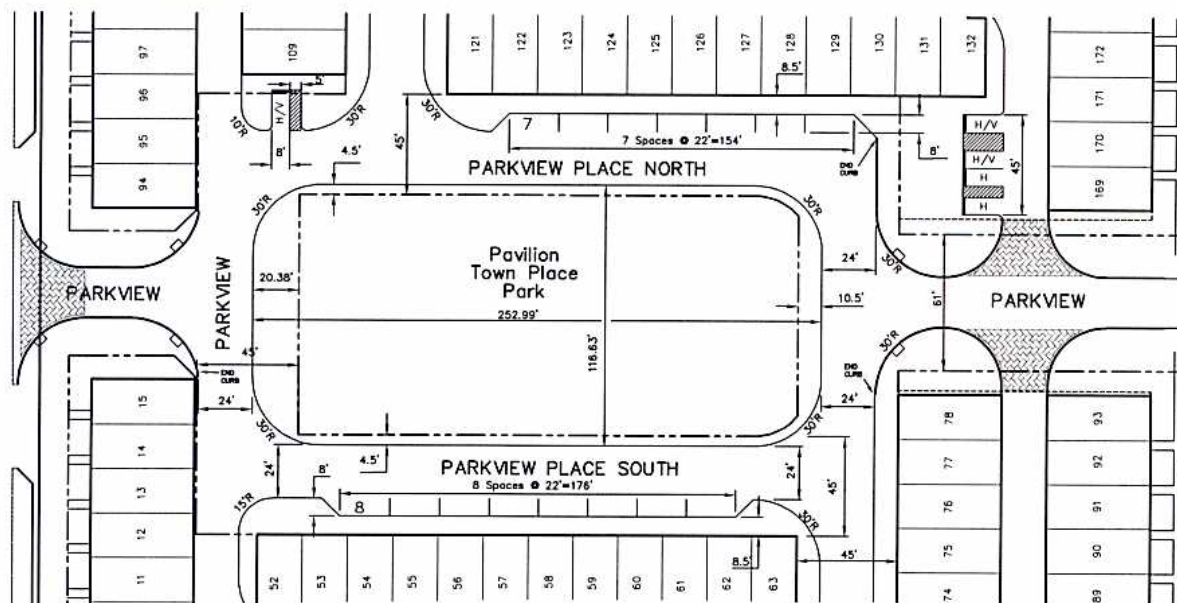
Sincerely,

Kevin G Bernauer ASLA AICP
Associate Principal

AGREED AND ACCEPTED:

Authorized signature for Client

Date



LEGEND

- Existing Contour
- Existing Spot Elevation
- Proposed Contour
- Proposed Spot Elevation
- Pipe Arrow
- Existing Curb
- Proposed Curb
- Existing Storm Sewer Line
- Proposed Storm Sewer Line
- Existing Water Line
- Proposed Water Line
- Existing Sanitary Sewer Line
- Proposed Sanitary Sewer Line
- Valley Gutter

PARKVIEW EXHIBIT
PARKVIEW AT ADDISON CIRCLE
TOWN OF ADDISON, TEXAS
COLLIN COUNTY

BY BROCKETT, DAVIS, DRAKE, Inc.
 Consulting Engineers
 4144 North Central Expressway, Suite 1100 Dallas, Texas 75204
 (214) 350-3600, fax (214) 634-7994

REVISION	DATE	SCALE	NOTES	FILE	NO.
REV	8/01	1/24	1"=30'	8/01	005363
					1

Council Agenda Item: #R14

SUMMARY:

To consider a resolution by the Addison City Council demonstrating its opposition to any school finance or taxing system reforms that would negatively affect the Town's revenues and efforts regarding economic development.

FINANCIAL IMPACT:

Revenue Budgeted Amount: \$N/A

Cost: \$N/A

BACKGROUND:

For the last several weeks there has been ongoing deliberations among our state elected officials on developing a plan to resolve the current school finance problems. It is anticipated that Governor Perry will soon call a special legislative session to address these issues. Unfortunately, some of the proposed ideas would negatively affect Texas cities' ability to collect revenues and as a result severely affect our ability to provide services to citizens. For example, one proposal calls for placing caps on property tax revenues and placing a 3% cap on increases in residential property appraisals. Some state officials believe that once school property taxes are lowered that cities and counties will rush to increase their tax rates to fill the gap.

Town staff and the Texas Municipal League (TML) are monitoring very closely these ongoing developments. In addition, TML is warning cities that the proposals presented by some legislatures are very serious in nature and are calling upon the cities to pass a resolution, write letters, place phone calls, and have face-to-face visits with their legislator explaining the negative effect these proposals will have on city budgets.

The attached resolution was developed by TML and addresses a number of reasons to oppose limitations on the ability for cities to collect property and sales tax revenues, or set tax rates. Several documents are included behind the resolution to provide additional information regarding the school finance matter.

RECOMMENDATION:

It is recommended that the City Council approve the resolution demonstrating its opposition to any school finance or taxing system reforms that would negatively affect its revenues and efforts regarding economic development.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN OF ADDISON, TEXAS, OPPOSING
ANY SCHOOL FINANCE OR TAX SYSTEM REFORMS THAT
WOULD NEGATIVELY AFFECT CITY REVENUES AND ECONOMIC
DEVELOPMENT EFFORTS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS:**

WHEREAS, it is likely that the Texas Legislature will address school finance and tax system reforms in the near future; and

WHEREAS, during these deliberations by the Texas Legislature, proposals to limit the ability of cities to collect property taxes and sales taxes are likely to be offered by some members of the Legislature; and

WHEREAS, additional restrictions on city taxes fly in the face of a history of frugal tax administration by Texas cities; and

WHEREAS, all Texas cities combined collect only 15.3 percent of all property taxes collected in the State of Texas, while schools collect more than 60 percent; and

WHEREAS, between 1985 and 2002, the municipal share of all property tax revenue fell from 20.3 percent to 15.3 percent; and

WHEREAS, Texas cities rely on tax revenue to build basic infrastructure, to ensure public safety through police and fire departments, and to provide numerous essential services for city residents, who are 80 percent of the state's population; and

WHEREAS, Texas cities engage in numerous economic development activities that produce jobs and revenue for the entire State of Texas; and

WHEREAS, cities must meet the challenges of homeland security and compliance with state and federal mandates, many of which are unfunded mandates; and

WHEREAS, Texas cities have shown over the years that they are fiscally responsible and good stewards of taxpayers' money; and

WHEREAS, efforts to limit the ability of cities to collect sales and property tax revenues or to set tax rates would have severe negative impacts on city services, city employees, economic development efforts, and ultimately the citizens of the State of Texas;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

That the governing body of the Town of Addison will oppose all school finance or tax reform efforts by the Texas Legislature that negatively impact the ability of the Town to provide basic essential services, conduct economic development activities, and ensure public safety by limiting our ability, beyond the provisions of current law, to collect property tax or sales tax revenues.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2004.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

School Finance and Texas Cities

“Are cities and schools in Texas interconnected?”

Yes. Texas cities and school districts are interconnected in a number of ways. To a great extent, cities form the environment in which schools exist. For instance, cities provide the infrastructure that is used by all schools within their boundaries. City services like police and fire protection, utilities, parks and recreational facilities, and libraries all benefit area schools.

Because of the close relationship that exists between the two entities, legislation that harms cities can also harm schools. If cities are unable to provide the necessary basic services and infrastructure for their citizens, then the local school districts will also suffer. If a city stagnates in its ability to prosper and grow, so too will its schools. It would be unfortunate if school finance reform backfires because cities are unable to provide the services that help schools to thrive.

“Can school finance reform harm cities?”

Yes. A number of the options proposed for school finance reform could have negative impacts on cities. Specifically, these options could:

1 Negatively affect the ability of cities to generate property tax revenue. The property tax is a primary source of revenue for Texas cities. Revenue from property taxes paves our city streets, pays our police and firefighters, builds and maintains parks, and supports many other functions. There is a danger, however, that school finance reform proposals will address a perceived need to “reform” existing property taxes, even city taxes. While rising property taxes are a burden to landowners, it is critical that the legislature recognize that the source of the problem is not, and has never been, the city property tax component of a citizen’s tax bill. While school district taxes have been on the rise, for example, city property taxes have generally held steady. Further, city property taxes as a percentage of total property tax bills have shrunk compared to school, county, and special district taxes. Accordingly, the Texas Legislature should resist efforts to “reform” city property taxes through new caps, freezes, or other artificial limitations. Current “Truth-in-Taxation Laws” are adequate to protect taxpayers.

2 Reduce sales tax revenue. Statewide, city sales taxes are nearly equal to property taxes as a source of city revenue. Most cities have adopted a basic one-cent city sales tax, and many cities have additional, dedicated-purpose sales taxes. Recent legislation has proposed expanding the state sales tax base to include many previously untaxed services. Rather than allowing each city to apply its sales tax rate to the expanded base, however, the proposed legislation would appropriate the entire increase in both state and municipal sales tax revenue to a state education fund. This is troubling for two reasons. First, it takes from cities what should be theirs. The one-cent city sales tax should apply to the same base as the state’s sales tax. Second, it will be difficult, if not impossible, for the state to accurately determine the extent to which city sales tax increases are due to the expanded base and which increases are due to ordinary economic growth. As a result, city sales tax revenue can be reduced.

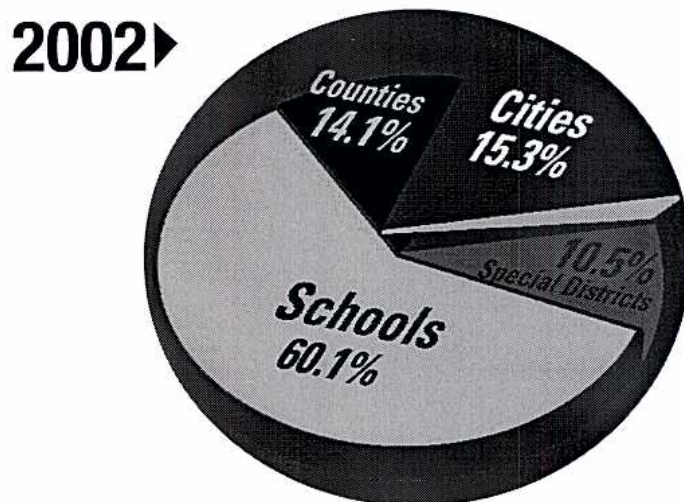
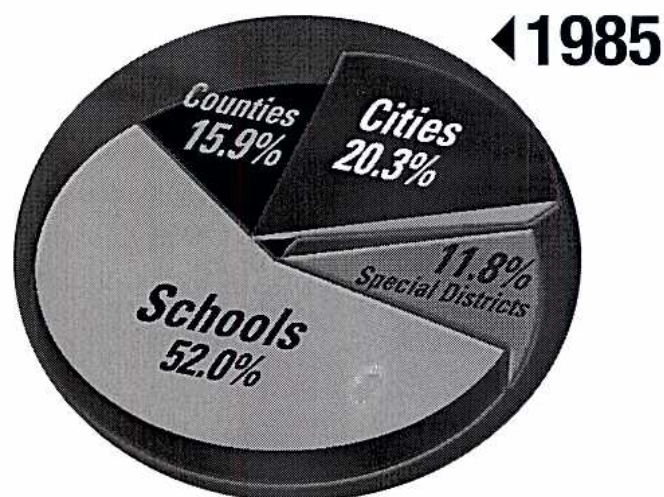
3 Harm municipal and regional economic development efforts, particularly those involving tax incentives. When a city engages in tax incentives for economic development reasons, it is frequently desirable to have county and school district participation in the incentives if possible. Because school district property taxes constitute the lion's share of most tax bills, failure to involve schools can doom a city-initiated economic development program. If the school property taxing function is moved to the state, but no provision is made for continuation of school participation in economic development, statewide economic development will suffer. The legislature should continue current public school economic development authority, and look for proactive ways to work closely with cities and counties for economic development purposes.

“Can school finance reform occur without harming cities?”

Yes. School finance reform can occur without negatively impacting cities and their citizens if the legislation:

- 1** Does not reduce city sales tax revenue;
- 2** Does not affect the current authority of cities to generate property tax revenue; and
- 3** Does not affect municipal economic development authority.

“Distribution of Property Tax Collections”



FOR MORE INFORMATION CONTACT



Texas Municipal League
 1821 Rutherford Lane, Suite 400
 Austin, TX 78754
 512-231-7400 (phone)
 512-231-7490 (fax)
www.tml.org

Section 305.027, Government Code, requires legislative advertising to disclose certain information. A person who knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not contain the information required under that section commits an offense that is a Class A misdemeanor. Mr. Sturzl represents the member cities of the Texas Municipal League. His address is 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128. December 2003.

Where Do Texas Cities Get Their Money?

City government is where the rubber meets the road. Cities pave our streets, fight crime and fires, prepare us for disaster, bring water to our taps, take our trash away, build and maintain our parks—the list goes on and on. These services cost money. This pamphlet describes the sources of municipal revenue.

A TML survey shows that municipal general fund revenue in Texas is made up of the following sources:



Conspicuously absent from this list is financial assistance from the state. This is unusual—most states provide direct financial assistance to cities in recognition of the fact that cities provide basic services on which the entire state depends.

Instead of revenue, Texas cities receive something equally important from the state—broad authority to govern themselves, including the authority to raise their own revenue. This local authority has worked to the benefit of cities and the state for many decades, and should continue into the future.

Here's more information on each source of municipal revenue.

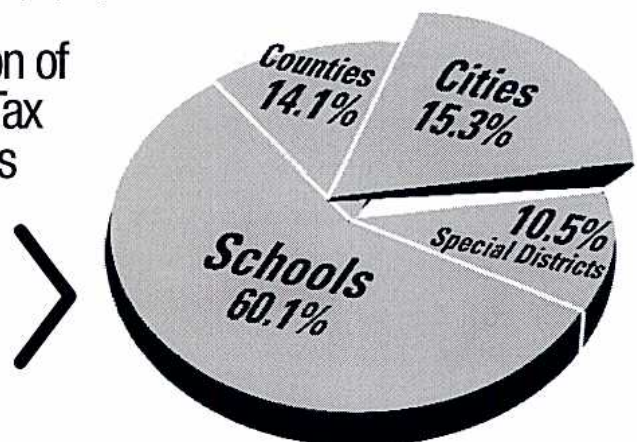
Sales Taxes

Sales taxes are a leading source of city revenue. Nearly 93 percent of Texas cities levy a basic one-cent city sales tax. The revenue can be used for any purpose other than payment of debt. Many cities, though not all, also impose additional sales taxes in varying amounts of up to one cent. These additional sales taxes are known as dedicated taxes, because their proceeds may be spent only for certain purposes. Some popular dedicated sales taxes include mass transit, economic development, property tax relief, and sports venue taxes. All city sales taxes, including the basic one-cent sales tax, require a local-option election of the citizens. Collection of sales taxes is performed by the Texas comptroller, who "rebates" the city share on a monthly basis. The comptroller retains a small portion of the city tax revenue to cover the state's administrative costs.

Property Taxes

Property taxes are equal to sales taxes as a leading source of city revenue. Though crucial to city budgets, city property taxes make up just a fraction of a property owner's total property tax bill.

Distribution of Property Tax Collections



Cities have statutory authority to levy property taxes at a rate of up to \$1.50 per \$100 of assessed value for most cities under 5,000 population, and up to \$2.50 for most cities over 5,000 population. Despite this broad authority, the average city property tax rate was only \$.57 for tax year 2002.

City property tax levies are tied by law to fluctuating property tax values. As values increase, the city must adjust its rates or face potential rollback elections. In reality, such tax rollback elections are rare. City rates have held relatively steady for years, both in terms of actual rates and in terms of total levy as adjusted for inflation and rising income.

Franchises

When utilities and other industries use city property to distribute their services, cities are permitted by law to collect rental fees, also known as "franchise" fees, for the use of public property. Franchise fees are calculated by various methods, depending on industry type.

Permits and Fees

Cities may collect fees for issuing permits for building construction, environmental regulation, and for other services. Because cities incur costs to regulate in these areas, the permit fees must be tied to the cost of providing the service.

Court Fines

A city that operates a municipal court may impose fines for violations of traffic laws and city ordinances. Maximum fines typically range from \$200 for traffic violations, up to \$2,000 for city ordinance violations relating to health and safety. Much of a city's fine revenue offsets the costs of law enforcement and operation of the municipal court system.

Interest Earnings

When a city invests its funds, it must closely follow the mandates of the Public Funds Investment Act. Because of the twin concerns of safety and liquidity, investment income is a relatively small source of city revenue.

Transfers from Other Funds

Many cities operate utilities and other optional services that generate substantial gross revenues. By law, the fees for such services must closely offset the cost of providing the service. In addition to the cost factor, cities are permitted to retain a reasonable "return" which can then be transferred to the general fund. This return amounts to less than six percent of overall city revenue.

Other Sources

City revenue can take various other forms, including user fees for some services, amusement taxes, and hotel occupancy taxes.

The Bottom Line

The state could put municipal revenue at risk in at least two ways. First, the state could increasingly look to cities for revenue to fund state programs. When a state provides direct financial assistance to its cities, such trading of revenue might be workable. Texas is not such a state. Texas cities receive virtually no direct funding from the state, and cannot afford to fund the state's obligations. Second, the state could erode the statutory authority under which cities raise their own revenue. While cities are indeed subservient to the state, city officials hope that the respectful nature of the fiscal relationship between Texas cities and the state will continue for years to come.

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Section 305.027, Government Code, requires legislative advertising to disclose certain information. A person who knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not contain the information required under that section commits an offense that is a Class A misdemeanor. Mr. Sturzl represents the member cities of the Texas Municipal League. His address is 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128. January 2004.



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CALL TO ACTION: CITY OFFICIALS SHOULD CONTACT LEGISLATORS

As recent editions of the TML Legislative Update have warned, school finance reform poses serious threats to city finances. Not a day goes by without new reports of proposals by key state officials to limit the ability of cities and counties to raise revenue. The conventional wisdom in some Capitol offices seems to be that the moment school property taxes are reduced or replaced, cities and counties will rush to fill the void with higher taxes of their own. This is an unfounded fear based on the belief that local officials are anxious to gouge the taxpayers.

City officials should **now meet with their local legislators** about this specific issue and the effect of school finance reform on cities generally. While letters and phone calls can be useful, nothing works as well as face-to-face meetings with legislators in their district offices. TML encourages each city to arrange a meeting with each of their state legislators within the next month. The following points may be useful when conducting the meetings:

1. There is no evidence whatsoever that city taxes are poised to increase even one dollar as a result of school tax reform. City tax rates are held in check for a number of reasons, none of which has to do with the level of school taxes, high or low. For one, city government is the government closest to the people, and people don't like tax increases. City councils are elected by the same voters who elect state officials: an electorate that doesn't look kindly on new taxes.
2. City services benefit all Texans, city residents and non-residents alike. Municipal public safety personnel are the first and most important line of defense in homeland security. When disasters strike, city fire trucks, police cars, and ambulances don't stop at the city limits. City roads and airports are the foundations of our economy—without them, state commerce would grind to a halt. The list of invaluable municipal services goes on and on.
3. City services benefit schools. It would be unfortunate to improve the school funding system only to harm the cities in which schools are

located.

4. Texas cities receive virtually no funding from the state to assist in providing these essential services. Tax caps or revenue limits of any sort, in the absence of any state funding, are patently unfair and may lead to a disastrous reduction in city services.

5. Current truth-in-taxation laws are designed to prevent sudden property tax increases. Fears about “hiding” tax increases within appraisal increases are unfounded. When valuations rise, the effective tax rates of cities drop in exact proportion. This lowered effective rate is the baseline from which cities must operate, triggering tax hearing requirements and the potential of a rollback election. In other words, the effective rate, which is well-publicized by cities, is designed to shed light on the relationship between appraisal valuations and tax rates. Cities that must raise property taxes do so now in the full light of day, thanks to the effective rate calculations.

6. Proposed tax or revenue caps ignore budget realities. (Please see article below.)

Prior to meeting with members of the legislature, it may be helpful to download these two pamphlets prepared by TML staff: “Where Do Cities Get Their Money?” and “School Finance and Texas Cities.” City officials should feel free to share these materials during their meetings with their legislators.

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SCHOOL FINANCE REFORM: CITIES IN THE CROSS HAIRS?

If there had been any doubt that Texas cities can be harmed by a special session on school finance reform, that doubt was erased by comments made at a public policy conference in Austin last week. The conference, sponsored by the Texas Public Policy Foundation, included a panel discussion about school finance. On the panel were two prominent members of the legislature. After the panelists had finished their prepared remarks, there was a standard question-and-answer period. The executive director of a statewide business lobby organization immediately asked the following question: if local school property taxes are reduced, what can the legislature do to prevent cities and counties from enacting large tax increases to make up the difference? One of the legislators on the panel answered that the legislature would need to devise a way to statutorily "slow down" local rates, including a possible requirement that a vote of the public be required to raise municipal taxes.

New Reasons for Concern

This exchange was alarming for several reasons. Most obvious, of course, is the very real possibility that the legislature will attempt to erode the ability of cities to raise revenue to pay for services. Further, it is clear that this effort may be undertaken not just by the legislature, but by other groups such as the business lobby.

The most likely scenario is that a special session on school finance will be held in April, and it is clear that cities face the very real possibility that school finance "reform" will include efforts to constrict municipal taxing authority. One approach may be to enact the so-called Taxpayer Bill of Rights (TABOR), which has already been enacted in Colorado and other states. Features of TABOR include the following:

1. any tax rate hike, new tax, or tax policy change resulting in additional revenue requires voter approval;
2. property tax revenues cannot, without voter approval, increase from one year to the next beyond the rate of inflation plus additions to the tax rolls from annexations and certain other

- adjustments; and
- 3. all multi-year obligations (bonds and other contractual obligations) require voter approval.

Since some state leaders appear to be interested in requiring votes of the people prior to tax increases, it is easy to anticipate the filing of a bill to enact TABOR in Texas. Advocates of such an approach are apparently unimpressed with the Truth-in-Taxation safeguards already on the books. These safeguards, combined with old-fashioned anti-tax sentiment by local voters, have been more than sufficient to keep city taxes in check for years. No matter, say those who think that all taxing entities are out of control and must be reigned in.

Here's more. The January 28, 2004, edition of the San Antonio Express News reported that the school funding approach favored by the Governor's chief of staff **"would also prevent city and county governments from trying to raise their taxes after local school tax rates drop."**

In addition, the January 29, 2004, edition of the Quorum Report, an Austin-based newsletter, reported the following about the governor's school finance proposal:

In order to prevent non-school taxing authorities from simply raising taxes to take advantage of school property tax reductions, there would be severe restrictions on other taxing authorities. Any effort to increase revenues would have to be approved in a public referendum by the voters...In order to 'fix the appraisal problem,' local property tax appraisal boards would be elected.

As if these possibilities weren't scary enough, still lurking in the background is S.J.R. 1, a bill that passed the Senate during the 2003 legislative session. (Please see the January 9, 2004, edition of the *TML Legislative Update*.) That bill would have diverted some city sales taxes to the state, without providing a reliable mechanism to calculate the state's share versus the city's share. Also, that bill would have dramatically reduced local school property taxes, resulting in cities and counties paying a much higher share of appraisal district operating costs. There is every reason to think that a proposal similar to S.J.R. 1 may surface again. It is possible, in other words, that cities will face attacks on property and sales taxes during a special session, a session that is ostensibly about schools.

The TML Task Force on the Impacts of School Finance Reform

As previously reported, TML formed a special task force on school finance in August 2003. The Task Force on the Impacts of School Finance Reform was asked to:

- 1. identify the potential impacts on cities of legislation designed to reform the manner in which public schools are funded;
- 2. describe the potential impacts on specific revenue sources

- (property tax, sales tax, other revenues);
3. recommend ways in which the potentially negative impacts can most effectively be opposed; and
 4. report to the TML Board at its November 19, 2003, meeting in San Antonio.

On November 19, the TML Board adopted the recommendations made by task force. City officials have already begun to participate in the recommended actions by scheduling and conducting meetings with key members of the legislature. TML has provided material that has facilitated these meetings, and will continue to do so in the coming days and weeks.

The fear that Texas cities will go on a property tax binge if local school property taxes are reduced is thoroughly refuted by historical realities. Here are the facts:

1. All Texas cities combined (nearly 1100 cities) collect only 15.3 percent of all property taxes collected in the Lone Star State. Schools account for 60.1 percent.
2. Between 1985 and 2002, the municipal share of property taxes fell from 20.3 percent to 15.3 percent.

For more info, click on [“Where Do Texas Cities Get Their Money”](#) and [“School Finance and Texas Cities.”](#)

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Contact the Press Office

Mar. 11, 2004

Gov. Rick Perry Calls for 'True Property Tax Relief'

Proposals Will Protect Homeowners, Employers by Capping, Controlling Taxes

HOUSTON - Gov. Rick Perry today proposed a series of measures that will provide Texans with real property tax relief and protect them against skyrocketing property tax increases in the future.

"We must learn from past experience that it is not good enough to just provide property tax relief. We must also provide appraisal relief," Perry said.

"Texans were told a property tax cut was on the way in 1997, but when they opened their bill many found that their rate cuts were offset by appraisal hikes. I want a tax cut to be a tax cut, not a sleight of hand where the end result means Texans pay more."

The governor's four-part plan will:

- ✧ • Limit property appraisal increases for homesteads to 3 percent per year - significantly more protection compared to the current 10 percent cap.
- ✧ • Limit the amount of revenue local entities can raise from property taxes to the amount raised the previous year plus an inflation and population growth factor.
- Require mandatory sales price disclosure for real property.
- Establish appraisal district boards of five elected officials who will be accountable to taxpayers.

Perry's plan also gives local taxpayers a stronger voice in their taxing destiny by requiring local taxing entities to get voter approval to exceed the revenue cap.

Perry noted that the median sales price of a Texas home is just under \$129,000 and the annual property tax bill on that home is just over \$3,500. Under current law, even without a property tax rate hike, that Texas homeowner could see his or her bill increase \$350 in one year, and by even more in succeeding years.

"It's a phenomenon called appraisal creep and it is nothing less than a tax hike by any other name," Perry said.

The governor also noted the revenue cap on local taxing entities that he is proposing is similar to what is done in about half the other states. The proposal to tie property tax revenue to inflation and population growth will allow local governments to expand in proportion to rising costs and population.

"Fast-growth communities with high enrollment growth and large volumes of new construction will have more room in their budgets to keep up with growth," he added. "My plan allows for budgetary growth, but it doesn't fund bigger government just for bigger government's sake."

Perry emphasized that his plan will allow cities, counties, schools and special taxing districts to raise additional revenues beyond the caps, but only if they first get approval of a simple majority of voters.

A revenue cap on property taxes is important, he added, because it will make government more accountable to the people by requiring additional spending to be justified. Perry also said the state cannot allow a school property tax cut to be swallowed up by ever-increasing valuations, or tax hikes levied by cities, counties and special taxing districts.

"When we reduce school taxes, it will be very tempting for other taxing entities to fill the void," Perry said. "But Texans deserve a property tax cut, not a property tax charade."

Perry said he is joining the chorus of people all across the political spectrum who are seeking property tax relief. But he added homeowners are naturally skeptical of promises for property tax relief because of their experiences in 1997 - when the legislature approved a \$1 billion biennial property tax cut and then saw it taken away by local jurisdictions that raised rates and appraisals.

"Had we implemented a revenue cap in 1997 tied to inflation and population growth, Texans could be paying about 20 percent less in property taxes today," Perry said.

To ensure property appraisal fairness and accuracy, Perry said, Texas also should require disclosure of real property sales prices - as some Texas appraisal districts and 35 other states already do.

Perry said his plan also addresses local entities' budget concerns by promising an end to unfunded mandates from the state.

The governor also said taxpayers will see increased accountability with restructured appraisal boards consisting of the county judge, the mayor of the largest city in a county, the mayor of another city selected by all other cities, the president of the largest school board, and the county tax assessor-collector.

"Those who spend our tax dollars should not only be accountable for how the money is spent, but how the money is raised," he said.

Perry also said he agrees with legislative leaders in calling for a cut in property taxes, but he said leaders continue to review options to determine how much of a tax cut might be achieved.

Perry also acknowledged that big-government, big-spending advocates will likely denounce his plan.

"They should keep in mind that when they show contempt for my property tax control plan, they are not just thumbing their nose at me, but at millions of homeowners and employers who have been under siege by skyrocketing property tax rates and valuations," Perry said.

Learn more about Gov. Perry's Education Excellence Incentives and the Taxpayer Protection proposals.



For Immediate Release
Thursday, March 11, 2004

Contact: Frank Sturzl
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City tax cap or tax freeze won't solve school finance problems

AUSTIN, Tex.—The executive director of the Texas Municipal League urged Texas lawmakers to steer clear of hurting city finances in a search for a solution to the state's school finance problems.

"We applaud lawmakers who are working on the school problem, but we don't want Texas cities to be the victim of a hit and run accident with a school bus in seeking a solution," Frank Sturzl, executive director of TML said of Gov. Rick Perry's proposal for a cap or tax freeze on city finances.

Cities are not poised to raise taxes if lawmakers cut school property taxes, and city officials are hopeful that lawmakers will not be panicked into legislation that would harm city efforts to provide local services, Sturzl said.

He pointed out that Texas cities have raised property taxes very little in the past 17 years.

"Cities collect only 15 percent of property taxes in Texas while schools collect more than 60 percent. The municipal share of all property taxes fell from 20.3 percent to 15.3 percent from 1985 to 2002. And, city property taxes—adjusted for inflation—went up by only 37 percent between 1985 and 2002, while the population increased by 33 percent."

Sturzl said there are effective truth-in-taxation laws on the books to protect the public's checkbook at the city level. To tinker with these laws could bring unintended consequences that will ultimately harm city residents who make up more than 80 percent of the state's population.

"Cities don't want a blank check on taxes. They want to be able to meet the challenges of growth and services in a fiscally sound and responsible manner. They are faced with homeland security issues, health care issues and state and federal mandates—many of which are unfunded."

(more)

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Sturzl said any attempt to link a tax cap for cities to a tax reduction in school property taxes would likely produce tax chaos, not tax reform.

Mayors and city council members work at the grass roots level and are finely attuned to the financial needs of their communities and how to raise the money to pay for those needs. They provide more than adequate check and balances against the potential of runaway city property taxes, he said.

"Texas cities hope that lawmakers won't confuse Robin Hood with the folks that fix your potholes. They aren't the same and aren't even related."

"Any effort to restrict city taxing authority would unnecessarily complicate and distract from the Legislature's job to solve the school finance crisis," he said.

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GOVERNOR UNVEILS PLAN TO CAP MUNICIPAL PROPERTY TAX REVENUE

At press conferences in Houston and San Antonio on Thursday, March 11, Governor Rick Perry unveiled his plan to: (1) place caps on property tax revenues, (2) place a 3-percent cap on annual increases in the appraised value of residential homesteads, and (3) require voter approval of property tax revenue increases that exceed certain levels.

At the same time, the governor's office released details of the plan in a document entitled, "Educational Excellence Plan." The document did not explain how a cap on municipal property tax revenue would advance educational excellence.

Here are the key features of the governor's plan, along with an analysis of each.

Local Government Revenue

This part of the governor's plan sets a cap on property tax revenue for each local government and allows for an inflation and population growth factor. **"Any increase in property tax revenues beyond inflation or population growth would require local voter approval,"** the governor said. Property taxes for existing debt service would be exempt from the revenue cap.

The governor's fact sheet says that "about half the states have some form of limitation on the growth of property tax revenue local governments can levy each year without voter approval." The governor specifically mentioned Washington, Massachusetts, Idaho, Nevada, Mississippi, Colorado, Michigan, Montana, and South Dakota. But most of those states have something Texas cities don't have: state financial aid. The chart below shows current state aid to cities for each state, per capita state aid, and the amount that state aid would be in Texas if it were adjusted for population. (Note: "state aid" means a grant made by the state government to cities from revenue generated by the state. Aid to schools is excluded.)

State	(\$ Millions) Total State Aid/Current Year	Per Capita State Aid to Cities	(\$ Millions) How Much Would That Amount to in Texas?
Colorado	\$187-\$229	\$41.09- \$50.32	\$908.8- \$1,113.0
Idaho	\$90.9	\$66.54	\$1,471.77
Massachusetts	\$1,143.0	\$177.68	\$3,930.02
Michigan	\$1,668.7	\$165.65	\$3,661.94
South Dakota	\$8.959	\$11.73	\$259.45
Washington	\$119.5	\$19.49	\$431.09
Texas	\$68.564	\$3.10	-

The governor's fact sheet says his proposed revenue limit is similar to the limit in Colorado. The chart above, however, shows that Colorado cities annually receive roughly \$50 per capita in state financial aid. Adjusted for population, that would be nearly a \$1 billion state aid program in Texas. The fact is that most states that have revenue limits pump millions and millions of dollars per year into cities. It's clear that a local tax revenue limit is much easier to handle when the state government is willing to provide financial assistance to cities.

There are many differences between Texas cities and the cities in these other states referenced by the governor. Here are just a few of those differences.

Montana – more than \$10 million of the state's gasoline tax revenue is shared with cities. Adjusting for the difference in population, that would be a \$241 million program in Texas. Again, limitations on local revenue are easier to live with when the state is willing to provide financial assistance.

Nevada – Nevada has only 19 incorporated cities. To judge by its largest city (Las Vegas), intergovernmental aid--largely from the state--is the primary source of municipal revenue: almost 45 percent. Property tax accounts for only 11 percent of municipal revenue in Las Vegas.

Michigan – Detroit, the state's largest city, gets more than 10 percent of its revenue from state aid, almost 10 percent from a municipal income tax, and only 6.8 percent from property taxes.

Colorado – the home rule cities in Colorado can establish any sales tax rate they wish. The City of Denver, for example, has established a local tax rate of 3.5 percent. A home rule city can also establish the sales tax base. Many Colorado cities, for example, tax food for home

consumption.

The point is that in each state referenced by Governor Perry, there are factors that substantially neutralize any negative effects of a revenue cap.

It is extremely dangerous to transport just one feature of the state/local system from one state to another without understanding the entire system. If the governor's proposals are enacted, Texas cities will be subject to the worst, most oppressive intergovernmental system in the nation. We would have a system that in its totality doesn't exist anywhere else in the nation, with the possible exception of California, which is hardly a worthy model.

The governor's inflation/population growth factor would appear to have a built-in problem. If any recurring expense goes up in cost by more than the growth factor, some other expense would have to be cut. Thus, when employee health care costs increase by 20 percent (not an unlikely scenario), other outlays would have to be cut to stay within the growth factor, or the city would have to call for a popular vote.

The governor's document also says that since 1999, city property taxes have increased by 8.8 percent annually, while the average annual growth in inflation plus population was 4.5 percent. So far so good. But what the governor's fact sheet doesn't say is that city sales tax revenues actually fell relative to inflation and population growth between 1999 and 2002. That means that cities were forced to raise property taxes in order to maintain service levels.

Finally, the governor's document omits another important fact: Texas cities undoubtedly raise more money for the state government than vice versa. For example, it is well known among city officials that municipal courts are used as cash cows by the state government and generate funds for numerous state programs.

Taxpayer Appraisal Relief

This part of the governor's proposal would limit residential property appraisals to an increase of no more than three percent per year. (The current limit is 10 percent per year.) "This cap shields individual homeowners from skyrocketing and arbitrary increases in the appraisal value of their property...the appraisal cap would be lifted when property is sold, and the value of the property would return to full market value for the new owner."

This part of the governor's proposal would undoubtedly shift the property tax burden to business and commercial property and to owners of residences that aren't going up in value.

Sales Price Disclosure

The governor's plan provides that "...actual sales price data would be

disclosed...at the time of closing and sent to the appraisal district and the state comptroller. The data could only be used in a protest hearing and for the comptroller's annual property value study."

Appraisal Board Accountability

The governor called for an appraisal board made up of:

1. the county judge,
2. the mayor of the largest city in the county,
3. the mayor of another city selected by all other cities,
4. the president of the largest school board, and
5. the county tax assessor-collector.

The board would be required to approve the appraisal roll so that "those responsible for spending property taxes also are accountable for how the money is raised."

As the Fort Worth Star Telegram pointed out, bringing these elected officials into the picture "would bring the danger of political pressure on appraisals..."

Unfunded Mandates

The governor would assure that "cities and counties do not receive new unfunded mandates from state government." Thus far, the governor's office has provided no details on this initiative. (The most costly and unpredictable mandates, of course, are *federal* mandates. It is doubtful that the state government can do anything about them.)

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